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OPINIONS
OF THE
OFFICE OF GENERAL COUNSEL
CENTRAL INTELLIGENCE AGENCY

VOLUME II
(1948)

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OPINIONS

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OFFICE OF GENERAL COUNSEL

CENTRAL INTELLIGENCE AGENCY

Volume II
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The volumes in this series contain in chronological order notes, memoranda, and opinions of law (published and unpublished) of the Office of Strategic Services, Strategic Services Unit, Central Intelligence Group, and the Central Intelligence Agency. They have been compiled for the use of the Office of General Counsel and are known as the Opinions of the General Counsel. Citations should include the designation "OGC" and volume and page numbers as in the following example: 2 OGC 75.

CENTRAL INTELLIGENCE AGENCY
Washington, D. C.

ADMINISTRATIVE INSTRUCTION
NUMBER ___ January 1948

SUBJECT: Loyalty Board

1. Under authority contained in Executive Order No. 9835, dated 21 March 1947, there is hereby established a Loyalty Board for the Central Intelligence Agency to review all loyalty cases arising in CIA and make recommendations with respect to the removal of any CIA officer or employee on grounds relating to loyalty. The Board shall consist of three voting members: the Executive Director, CIA, as Chairman, who shall for each case name two from among the Deputies to the Assistant Directors, CIA, as members. An Assistant General Counsel shall attend as Law Member without vote. In the event any case for consideration of the Board involves personnel of a branch under an Assistant Director, the Deputy for the Assistant Director of that branch will not participate in any deliberation or action of the Board on that case.

2. The Board shall make determination of all cases referred to it by majority vote. Where decision adverse to the employee is made by the Board, the individual concerned may appeal to the Director, CIA, within ten (10) days of the time when notification of the Board's action reaches him. The Director may request the Loyalty Review Board of the Civil Service Commission for an advisory opinion in any case referred to him. The employee concerned may appeal the final decision of the Director, within ten (10) days of receipt thereof, to the Loyalty Review Board of the Civil Service Commission for an advisory recommendation.

3. In the event the loyalty of any CIA employee is suspect, the case shall be referred directly to the Board by Assistant Directors for employees within their respective branches, or by the Security and Personnel offices through the Executive for Administration and Management. Where information reaches the Board from other sources, it may on its own initiative investigate the circumstances, utilizing all facilities of CIA, and determine whether or not the case is proper for its consideration.

4. When a case is accepted by the Board, it shall immediately notify the employee in writing of the charges made against him and shall forward to him written interrogatories containing the information on which the charges are based and requesting specific answers from the employee concerning such information. Notice to the employee shall state the time and place of the Board's meeting for that case and shall specify the time in which the completed interrogatories must be returned. In the case of employees located in Washington, fifteen (15) days notice of the Board's meeting shall be given, and ten (10) days shall be given for return of the interrogatory. Reasonable extensions of time may be granted by the Chairman of the Board upon advice of the Law Member. The initial notice to the employee shall also inform him of his right to appear in person before the Board at its meeting on his case, accompanied by counsel or representative of his choosing and to present evidence on his behalf through witness or by affidavit. He shall also be given specific information on any security questions which representation by counsel or representative outside the Agency may raise, particularly on what facts may be revealed about the nature and scope of his employment.

5. For employees outside of Washington and overseas, when the Board has accepted a case it shall forward interrogatories for completion by the employee and shall specify the time of return of the completed interrogatories. The Board shall then sit in a preliminary session to determine whether further action is necessary. If the preliminary decision is favorable to the employee, he shall be so notified and the record closed. If the preliminary decision is unfavorable, or the Board is unable to arrive at a decision, the employee shall be immediately returned to Washington and final action taken by the Board on his arrival, in accordance with the procedure outlined above for Washington employees.

6. When the Board has accepted a case as provided in paragraphs 4 and 5, the Board shall inform the Chief, Personnel Division, who shall take administrative action as provided in applicable regulations. The Board, however, may recommend immediate suspension on first reference of a case to it when there appears to be a serious threat to the national security. In cases not seriously threatening the national security, the Board may, with the approval of the Director, permit resignation instead of recommending suspension, or removal, where mitigating circumstances are found in an unfavorable determination.

7. In any case where decision by the Board is unfavorable to the employee and the right of appeal is not exercised, the Board shall make appropriate recommendation to the Director for dismissal of the employee. Approval by the Director of such recommendation, or the decision of the Director on cases appealed to him, shall constitute final disposition of each case, subject only to advisory recommendation of the Civil Service Commission's Loyalty Review Board, if requested. Final action to terminate an employee shall not be taken in less than thirty calendar days after the original notice to the employee of the proposed removal action, except as provided on page S 1-13 of the Federal Personnel Manual.

8. Files and deliberations of the Board shall be kept confidential, and all records, documents, and evidence not the property of the employee shall be forwarded to the Executive for Inspection and Security for disposition as follows. If the determination of the Board is favorable to the employee, the Executive for Inspection and Security shall retain the entire file with the security files on the individual concerned. If the individual is permitted to resign after unfavorable determination, as provided for in paragraph 6, the file should be forwarded to the Civil Service Commission with notice of the resignation. If the case is referred or appealed to the Loyalty Review Board of the Civil Service Commission, the file shall be forwarded to that Board in triplicate, unless the Board agrees that a single copy is adequate.

9. The Board need not follow strictly rules of evidence applicable to courts of law and need not divulge confidential sources of information, but the Law Member shall be responsible for advising the Board of any action of the Board which might infringe an employee's constitutional rights. All testimony at hearings of the Board shall be under oath or affirmation. The Law Member may report to the Director any action of the Board which, in his opinion, is an infringement of such rights. The standard for removal of an employee shall be that on all evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States.

10. Immediately before final action by the Director, each case shall be referred to the General Counsel, CIA, for review of the legal sufficiency of the administrative action taken.

R. H. HILLENKOETTER
Rear Admiral, USN
Director of Central Intelligence

13 January 1948

MEMORANDUM FOR THE EXECUTIVE FOR A&M

Subject: Loyalty Board

1. Under the provisions of Executive Order 9835 and the instructions issued by the Civil Service Commission on 23 December 1947, it appears that CIA will be required to establish a Loyalty Board.

2. In reviewing the instructions from the Commission, it appears that the Board established by CIG in Memorandum No. 19 of 16 April 1947 would be adequate for CIA's purposes, with a few necessary changes. Incidentally, this Memorandum was inspected by a representative of the Commission prior to issuance and was approved by him. Of course, all provisions of the memo referring to CIG should be changed to CIA. Provision should be made for suspension in proper cases and for permitting resignations, as authorized by the Civil Service Commission. I would suggest a new paragraph be added as paragraph 6, as follows:

> "6. When the Board has accepted a case as provided in paragraphs 4 and 5, the Board shall inform the Chief, Personnel Division, who shall take administrative action as provided in applicable regulations. The Board, however, may recommend immediate suspension on first reference of a case to it when there appears to be a serious threat to the national security. In cases not seriously threatening the national security, the Board may, with the approval of the Director, permit resignation instead of recommending suspension, or removal, where mitigating circumstances are found in an unfavorable determination."

This new paragraph would require renumbering old paragraphs 6, 7, 8, and 9, and the elimination of the last sentence of old paragraph 6. Paragraph 5 should be amended so that the first sentence reads:

> "5. For employees outside of Washington and overseas, when the Board has accepted a case it shall forward interrogatories * * *".

I suggest the addition to old paragraph 5 of a sentence stating:

"Final action to terminate an employee shall not be

taken in less than thirty calendar days after the original notice to the employee of the proposed removal action, except as provided on page S 1-13 of the Federal Personnel Manual."

Old paragraph 8 should be amended to insert after the first sentence:

"All testimony at hearings of the Board shall be under oath or affirmation."

3. The Civil Service Commission directs that in the event of resignation, notice be given the Commission and the complete file be forwarded to it. In view of our particular arrangements with the Commission, I feel they would be willing to exempt us from this provision, but if there is no objection to forwarding such files, old paragraph 7 should be amended to read as follows:

"8. Files and deliberations of the Board shall be kept confidential, and all records, documents, and evidence not the property of the employee shall be forwarded to the Executive for Inspection and Security for disposition as follows. If the determination of the Board is favorable to the employee, the Executive for Inspection and Security shall retain the entire file with the security files on the individual concerned. If the individual is permitted to resign after unfavorable determination, as provided for in paragraph 6, the file should be forwarded to the Civil Service Commission with notice of the resignation. If the case is referred or appealed to the Loyalty Review Board of the Civil Service Commission, the file shall be forwarded to that Board in triplicate, unless the Board agrees that a single copy is adequate."

4. If the order proposed above establishing the Loyalty Board is issued, we should forward a copy to the Commission, requesting its approval of the procedures therein established. In its letter, the Loyalty Review Board directs that agencies having the power of summary removal furnish the Board, upon request, with complete statistics regarding actions taken under that power. I believe no reference to the Director's authority under the National Security Act should be made in the letter referring the Loyalty Board order to the Commission. We are working on a draft of such a letter, in the event you wish to proceed in this manner.

LAWRENCE R. HOUSTON
General Counsel

LRH:mbt

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23 January 1948

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MEMORANDUM FOR THE ADSO

Subject: Deportation of Aliens

1. We informed you recently that the Department of Justice had confirmed newspaper reports on deportation of former members of the Communist Party. The Department views the statute in question as mandatory in regard to ex-communists.

2. A specific problem in this connection has been raised by one of the branches. It now has under its control overseas a young foreigner who was an officer of an organization now coming under the control of the Communist Party. The opportunity appears ideal for him to follow the present course of the organization to become a Communist Party member, with a possibility that he may become a trusted officer with access to valuable information while yet remaining under our control. It is my understanding that he desires no commitment as to entry into this country when the project is finished. He has, however, raised the specific question whether membership in the Communist Party for our benefit would prejudice his position if he would otherwise be admitted as a quota immigrant in the United States, on his own application under applicable Immigration laws.

3. Two courses are possible. In the first, we would merely document the plan and present intention fully by statements of responsible officers concerned. At the end of the project, they would study the situation carefully, and if he seems to have maintained his integrity, present the full story to the appropriate Consul and the Immigration and Naturalization Bureau with our recommendation. This would undoubtedly be of value in any visa application but would in no way guarantee him any protection. The second approach would be again to document the present situation in the same fashion and to present the situation actually, or hypothetically, to the Attorney General and request a statement from him that if the project succeeded and at the end the individual on careful investigation appeared properly qualified for citizenship, his membership in the

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SECRET

Communist Party for our benefit would in no way prejudice an immigration visa, or subsequent naturalization under applicable law.

4. I feel the Attorney General could commit himself on this point, as, although he feels that he must deport former actual communists, he has some discretion in determining what individuals fall into that category. The presentation of this specific case at this time would permit us to raise the larger general question of exceptions to the deportation rule in the case of defections brought about for intelligence purposes. The issue here would turn on whether we could show that a properly backed defection program, which could offer asylum in this country to the defectors, was necessary to intelligence operations to the extent that those operations would be seriously handicapped unless special handling could be guaranteed.

5. In view of the Attorney General's present attitude, it is felt that any such program would have to be laid before the Judiciary Committees of Congress in Executive Session, in order to get proper guarantees of effective action. The more subtle aspect of this question is that in almost all cases actual asylum in this country would not be required, but the fact that it could be promised would overcome the psychological deterrent to defection which the present attitude of the Department has encouraged.

6. If you wish further information on the Department of Justice's attitude on the questions involved, I believe it can be obtained informally without any commitments being made.

LAWRENCE R. HOUSTON
General Counsel

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Legal Opinions Law (Memos)

9 February 1948

MEMORANDUM FOR EXECUTIVE FOR A & M

SUBJECT: Proposed Administrative Instruction for Meritorious Suggestions Awards.

1. It is felt that corrections to the proposed administrative instruction indicated below be considered particularly for the following reasons:

(a) Sufficient weight does not seem to be laid on the fact that the meritorious suggestions are primarily those which will result in economy and over-all monetary saving.

(b) There is nothing in Public Law 600 or Executive Order 9817 which will permit in-grade promotions for meritorious suggestions.

(c) The question should be raised as to whether the Awards Committee may make the awards or merely serve in an advisory capacity to the Director for this purpose.

2. It is suggested that the first sentence of paragraph 1(a) might preferably read:

"In the interest of making continual improvement or economy in the operations of CIA . . ."

This follows the language of Executive Order 9817. The use of the word "management" is questioned, particularly as paragraph 4 of the proposed instruction specifically declares ineligible those having the assigned responsibility for the improvement of management.

3. The Committee appointed in paragraph 1(a) is called by two different names within the paragraph. It would seem preferable if one name could be agreed on -- such as "CIA Meritorious Awards Committee" or "CIA Meritorious Suggestions Awards Committee". The more calling of the Committee the

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"CIA Awards Committee" might raise an erroneous picture of its jurisdiction by an indication that it handle all awards for the Agency, including military.

4. Paragraph 1(a) of the proposed directive, in referring to the Committee membership, states that "These officers of the Committee may designate alternates. . ." As there is only one officer -- the Chairman -- perhaps he alone should designate alternates to the Committee. Otherwise, this sentence should read, "The Members of the Committee may designate alternates. . ."

5. Section 14 of Public Law 600 rests the authority to pay cash awards for meritorious suggestions in "the head of each department". For his guidance in the making of these awards, Section 2 of Executive Order 9817 establishes a monetary scale for payments commensurate with the amount of savings. This scale must be followed unless "for special reasons the head of the department shall determine . . . that a different amount is justified". It would appear, therefore, that the Director must pass on the amount of the award for a meritorious suggestion which is adopted solely or primarily because of monetary saving.

The Executive Order places the burden of passing on suggestions "in the judgment of the department head or other duly authorized authority in the department. . ." In view of this language, it is concluded that the Committee may pass on suggestions as the duly authorized authority in the Agency, and recommend as to the size of the award. However, their decision should be considered advisory only, and the monetary award should have the final approval of the Director in compliance with the terms of the Executive Order. It is recommended that this be complied with, as the General Accounting Office might, at some future date, raise the question as to who authorized the expenditure of funds in this connection.

It should be noted further that when a suggestion is adopted primarily upon the basis of improvement in operations or services rather than for reasons of economy, "the department shall determine the amount of the award. . ." As this section (Section 3) of the Executive Order is not qualified by any table of minimum or maximum awards, the Committee may make the final determination of the award to be granted, subject to the statutory limitation that no one award shall exceed $1,000.

6. After the phrase "79th Congress" in line 2 paragraph 2 of the original draft, suggest the addition in parenthesis of the phrase "(5 U.S.C.A. 116a)" for quick reference, as this is the standard legal form of citation.

It would again appear preferable in the conclusion of the second sentence of paragraph 2 to use the language of the Executive Order by revising to read, "suggestions for improvement or economy in the operations of C.I.A." The emphasis on suggestions for economy should be stressed.

7. It would seem preferable to follow more closely the language of the Executive Order in setting forth the awards authorized in paragraph 3. The proposed text in paragraph 3 (a)(1) does not point out clearly that this type of award is based on a suggestion that is adopted solely or primarily because it will result in monetary saving. It is suggested that paragraph 3 be revised to read as follows:

"3. AWARDS AUTHORIZED.

(a) The following awards are authorized for a meritorious suggestion which is adopted solely or primarily because it will result or has resulted in the saving of money. The amount of the award shall be based on the amount of the annual estimated saving in the first year of operation in accordance with the following table, unless, for special reasons, the Director shall determine, subject to certain statutory limitations, that a different amount is justified:

SAVINGS	AWARDS
$1 -- $1,000	$10 for each $200 of savings with a minimum of $10 for any adopted suggestion.
$1,000 -- $10,000	$50 for the first $1,000 of savings, and $25 for each additional $1,000 of savings.
$10,000 -- $100,000	$275 for the first $10,000 of savings, and $50 for each additional $10,000 of savings.
$100,000 or more	$725 for the first $100,000 of savings, and $100 for each additional $100,000 of savings; provided that ~~(with the exception of the War and Navy Departments)~~ the maximum award for any one suggestion shall not exceed $1,000."

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It is indicated in the proposed revision of paragraph 3(a) and in accordance with the Executive Order that the monetary basis for the award depends on the amount of estimated saving in the first year of operation under the meritorious suggestion. In addition, the original draft should be corrected as proposed above so that the monetary sums correspond with those set out in the Executive Order.

8. Paragraph 3 (a)(2) of the original draft should be eliminated. There is nothing either in Public Law 600 or Executive Order 9817 which permits special within-grade salary increases for meritorious suggestions. The foundation for these increases are based on another law and should be properly the subject of a separate administrative instruction.

Following paragraph 3(a), as proposed above, the following should appear:

> "(b). When a suggestion is adopted primarily upon the basis of improvement in the operations or services of C.I.A., the Agency shall determine the amount of the award commensurate with the benefits anticipated from the suggestion. The amount of any one award shall not exceed $1,000.
>
> "(c). Certificates, medals, or other emblems may be awarded by C.I.A. in honorary recognition of service which the Director determines to be exceptional or meritorious."

9. It is suggested that the original draft of paragraph 4 be reconsidered so as to include possible awards for those having specific responsibility for management improvement. Personnel in the management staff might suggest operational changes which exceed the normal requirements of the duties of their position or might produce a suggestion of such merit that the Director, in accordance with the terms of the Executive Order, might report it to the Director of the Bureau of the Budget for dissemination to all departments of the Government on the basis that the suggestion would benefit the Government service generally. The Law and Executive Order provide these awards for "any civilian officer or employee of a department", and consideration should therefore be given to the possible participation of those who have management responsibilities who might make suggestions in fields other than management. This is particularly true in an Agency such as C.I.A. where the line between management and operations may in some instances be quite clearly drawn.

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10. It is suggested that paragraph 5 of the original draft be revised to read as follows:

"5. BASIS FOR AWARD. Awards will be considered by the C.I.A. Meritorious Suggestions Awards Committee where in the opinion of the Committee the meritorious suggestion has resulted or will result in improvement or economy in the operations of the Agency by way of monetary savings, increased efficiency, conservation of property, improved employee-working conditions, better service to the public, or otherwise.

"In order to have the meritorious suggestion considered for an award, the suggestion must have been adopted for use in the Agency.

"No award shall be paid for any suggestion not adopted for use within five (5) years from the date the suggestion is received by the Agency.

"No award shall be paid to any officer or employee of C.I.A. for any suggestion which represents a part of the normal requirements of the duties of his position."

It should be noted, in connection with the five-year limitation set forth above, that the Agency may, in its discretion, change the period to one of less than five years. It is therefore suggested that the Executive for A & M determine the period which he considers appropriate should he deem five years to be too long.

11. The following paragraph should be included in the instruction, possibly as a new paragraph 6, with the old paragraphs 6 and 7 renumbered to 7 and 8:

"6. The cash award for a meritorious suggestion shall be in addition to the regular compensation of the recipient, and the acceptance of such cash award shall constitute an agreement that the use by the United States of the suggestion for which the award is made shall not form the basis of a further claim of any nature upon the United States by the recipient, his heirs or assigns."

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12. In order to conform to the terms of the Executive Order, the original paragraph 6 (a)(4) should be revised to read:

"(4). A detailed description of the suggestion with a statement of the actual saving of money which will result or has resulted in the first year of its operation."

Walter L. Pforzheimer
Assistant General Counsel

WLPforzheimer:blc

(via Legal Division Files)

9 February 1949

MEMORANDUM FOR EXECUTIVE FOR ADMINISTRATION AND MANAGEMENT

SUBJECT: Administrative Instruction for Meritorious Suggestion Awards.

1. The Executive for A and M is about to issue an administrative instruction in the 20 series in connection with a program of awards for meritorious suggestions by members of C.I.A.

2. In connection with this program certain administrative responsibilities will fall on the Agency and more particularly upon the Executive for A and M, in accordance with Public Law 600 of the 79th Congress and Executive Order 9817 which promulgates regulations concerning those awards. These responsibilities are over and above the problems attendant upon the internal administration of this program and are set forth herewith for your guidance.

3. The matters referred to above are as follows:

(a) The amount of any one award for meritorious suggestion shall not exceed $1,000 and the total of cash awards paid during any fiscal year by the Agency shall not exceed $25,000. (Public Law 600, Section 14)

(b) Payments may be made from the appropriation for the activity primarily benefiting, or may be distributed among appropriations for activities benefiting, as the Director determines. (Public Law 600, Section 14)

(c) Whenever the Director believes that the suggestion he has adopted would benefit the Government service generally, he may report it to the Director of the Bureau of the Budget for dissemination to all departments. (Executive Order 9817, Section 3)

(d) At the end of each fiscal year the Agency shall report to the Director of the Bureau of the Budget the number of employee suggestions submitted, the number of such suggestions adopted, the total amount of cash awards, and the total amount of estimated annual savings. (Executive Order 9817, Section 4)

(e) In addition to the cash award set forth in the administrative instruction, the Agency may provide for the purchase and award of appropriate certificates, medals or other emblems in honorary recognition of service which

the Director determines to be exceptional or meritorious. The expenditure for honorary recognition may be made from appropriations as indicated in 3(b) above. (Executive Order 9817, Sections 5 and 8)

4. If a cash award for a meritorious suggestion is being made, it is suggested that the recipient acknowledge its receipt in writing, which receipt should include a phrase to the effect that --

> "Acceptance of this cash award constitutes an agreement between its recipient, (Name of recipient), and the Central Intelligence Agency that the use of the meritorious suggestion by the United States for which this award has been made, shall not form the basis of a further claim of any nature upon the United States by me, my heirs or assigns."

At such time as it is determined that a meritorious award is to be made, the office of the General Counsel will assist in the preparation of the necessary release.

Walter L. Pforzheimer
Assistant General Counsel

WLPforzheimer:blc

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Amends

(via Legal Decisions (Memo of Law))

9 February 1948

MEMORANDUM FOR EXECUTIVE FOR A & M

SUBJECT: C.I.A. Meritorious Suggestion Awards Committee

1. This memorandum is furnished you as a Member of the subject Committee for presentation to the Chairman at an appropriate time to serve as a guide for Committee procedures.

2. The membership of the Committee will be announced in the appropriate administrative instruction and in the discretion of the Members of the Committee they may designate alternates to sit in their behalf.

3. Any civilian officer or employee of C.I.A. is eligible for consideration for an award and any former civilian officer or employee (or his estate) shall be similarly eligible for awards for meritorious suggestions made while in the service of the Agency.

4. For a recipient to qualify for an award for meritorious suggestion, such suggestion must be adopted for use in the Agency as a condition precedent to the making of an award.

5. In order to qualify for an award, as stated above, the meritorious suggestion must have been adopted by C.I.A. and must have resulted or will result, in the judgment of the Committee in improvement or economy in the operations of the Agency by way of (a) monetary savings, (b) increased efficiency, (c) conservation of property, (d) improved employee-working conditions, (e) better service to the public, (f) others.

6. When the Committee has decided that a suggestion is meritorious and is adopted solely or primarily because it will result or has resulted in the saving of money, the amount of the award shall be based on the amount of the annual estimated saving in the first year of operation, in accordance with the table listed in this paragraph, unless for special reasons the Director shall determine, subject to the limitations in Public Law 600, that a different amount is justified. In view of the fact that the Director shall determine whether a different amount is justified, the recommendation of the Committee in connection with

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meritorious suggestions adopted solely or primarily because they will result or have resulted in the saving of money is advisory only and must be approved by the Director. The table of awards in this connection as set forth in the Executive Order (unless for special reasons the Director shall determine that a different amount is justified) is as follows:

SAVINGS	AWARDS
$1 -- $1,000	$10 for each $200 of savings with a minimum of $10 for any adopted suggestion.
$1,000 -- $10,000	$50 for the first $1,000 of savings, and $25 for each additional $1,000 of savings.
$10,000 -- $100,000	$275 for the first $10,000 of savings, and $50 for each additional $10,000 of savings.
$100,000 or more	$725 for the first $100,000 of savings, and $100 for each additional $100,000 of savings; provided that (with the exception of the War and Navy Departments) the maximum award for any one suggestion shall not exceed $1,000.

7. When a suggestion is adopted primarily on the basis of improvement in the operations or services of the Agency, the Committee, as the Director's duly authorized authority in such matters, shall determine the amount of the award commensurate with the benefits anticipated from the suggestion. The maximum award for any one suggestion shall not exceed $1,000.

8. The amount of any one award shall not exceed $1,000 in any case and the total of cash awards paid during any fiscal year by the Agency shall not exceed $25,000.

9. The Committee may advise the Director of its recommendation for the purchase and award of appropriate certificates, medals or other emblems in honorary recognition of service of an exceptional or meritorious nature; however, the final determination must be that of the Director.

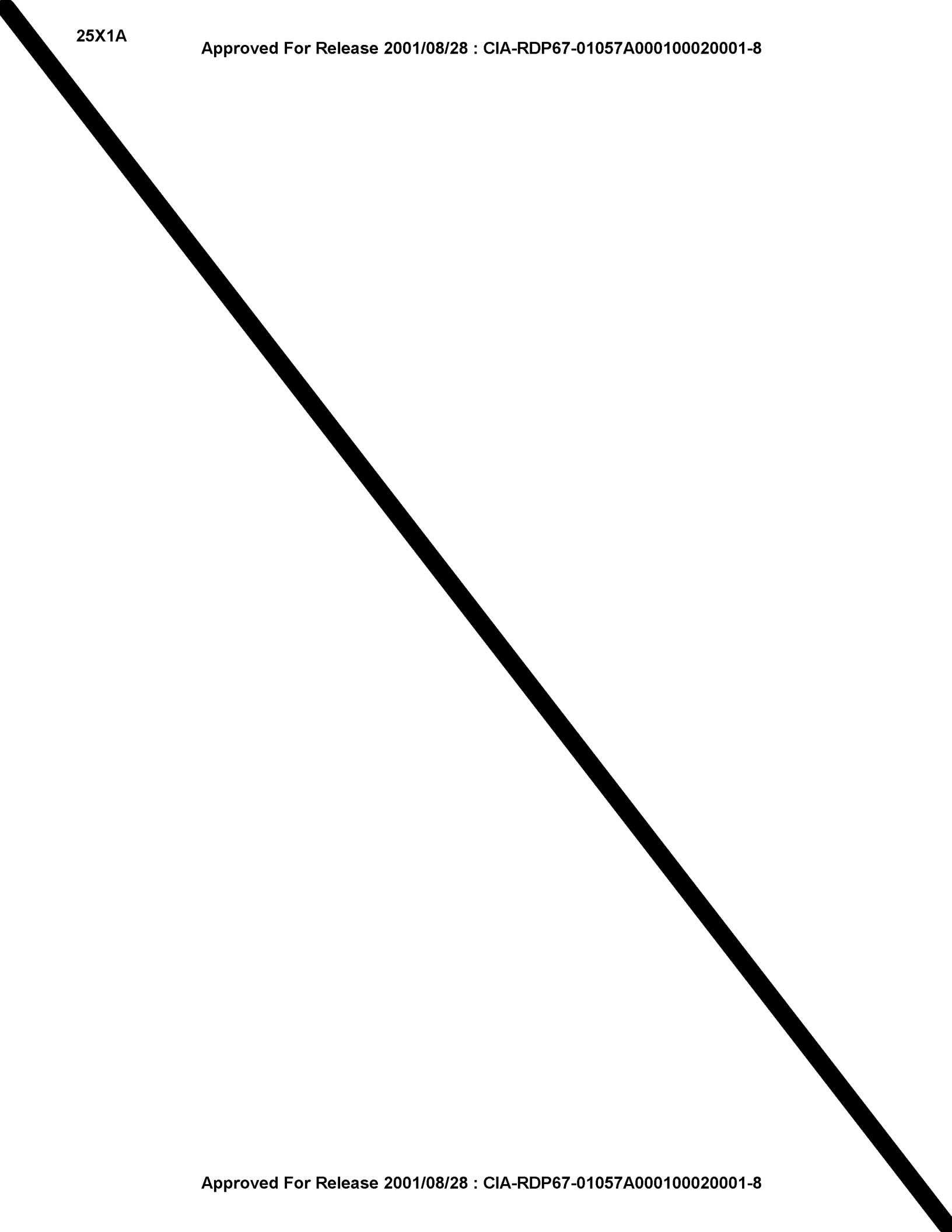
10. The Committee may not make an award for any suggestion which is not adopted within a period of years, to be decided upon, after the receipt of the suggestion by the Agency. Under no condition may the Committee make an award for a suggestion which is adopted more than five years after its receipt by the Agency.

11. The Committee may not make any award for a suggestion which represents a part of the normal requirements of the duties of the position of the applicant.

12. An award approved by the Committee shall be in addition to the regular compensation of the recipient.

Walter L. Forzheimer
Assistant General Counsel

WLForzheimer:blc



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Opposed to this is the statutory responsibility imposed upon you as Director by Section 102(d)(3) of the National Security Act which provides "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure". It is felt that the publishing of our personnel figures would be an unauthorized disclosure of intelligence methods.

3. In connection with Senator Byrd's statement that the Bureau of the Budget is required by law to fix ceilings and publish civilian personnel figures, there appears to be little room for contradiction. The law provides (5 U.S.C.A. 947(b)) that the Director of the Bureau of the Budget shall determine at least quarterly the number of employees required in each Department or Agency of the Government. It is further required that such determinations shall be reported quarterly to the Congress. Each such report shall include a statement showing each agency's net increase or decrease in employees as compared with the preceding report.

Thus it is apparent that the Director of the Bureau of the Budget is required to furnish the Congress with our personnel figures and it is assumed that this report is referred by the President of the Senate and Speaker of the House to the appropriate committees of the Congress of which, under its charter, the Byrd Committee is one. Failure to do this in connection with C.I.A. means that the Director of the Bureau of the Budget (who is also a member of the Byrd Committee) is in default of his legal obligations and could be compelled at any time to produce our figures. The only apparent legal remedy would be a section in proposed C.I.A. legislation exempting the Director of the Bureau of the Budget from furnishing the figures of this Agency to the Congress.

4. The Civil Service Commission is required by law (5 U.S.C.A. 654) to publish yearly an Official Register of the United States which contains a full and complete list of persons occupying administrative and supervisory positions in the Executive branch of the Government who are paid by the United States Treasury. This Register shall show the name, official title, salary, compensation and emoluments, legal residence and the place of employment for each person listed therein. The

law further requires that the head of an agency such as C.I.A. shall supply the Civil Service Commission with the data required by this Section as of the first of May of each year. Exemption from the provision of this law should be sought by legislation.

5. The Civil Service Commission furnishes Government personnel figures on a monthly basis to the Civil Service Committees of the Congress and the Byrd Committee as a matter of routine.

6. In view of the above, there appears to be very little legal grounds upon which the Director can stand in his conference with Senator Byrd other than the provision of the National Security Act, cited above, for protecting intelligence sources and methods from unauthorized disclosure.

Walter L. Pforzheimer
Assistant General Counsel

WLPforzheimer:blc

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Chief, Personnel Relations Division 1 March 1948
Attention: [redacted] 25X1A9a
General Counsel

Employees' Co-Operative

1. I have discussed the problem of making space in a Government building available to an Employees' Co-Operative with the office of the Commissioner for Buildings Management in PBA.

2. They agree that there is no restrictive legislation which specifically states that building space cannot be used for an Employees' Co-Operative. They point, however, to the wording of acts making appropriations for purchase and construction and care of buildings, which specify the money shall be used to construct facilities for the specific use intended by the act. They consider such language as restrictive in intent and, consequently, have a policy that space will not be made available for other than official business of the agency concerned. In this connection, they point to the fact that for the refreshment stands run by the blind, and PX facilities in PBA buildings, there is specific legislation to authorize the allocation of space. Also, the Department of Agriculture makes space available for certain not strictly official purposes, but they have special legislative authority which takes them out from under PBA.

3. It is acknowledged by PBA that there is no legislative authority to allocate space to CSI cafeterias, but this they justify under a general authority to use the buildings for all purposes necessary to the efficient support of Government business.

4. I pointed out that the New Interior Building contained a shop for the sale of Indian handicraft. They informed me that this was allocated during a period when the Secretary of Interior had control of the building and was done at the instance of the Secretary himself. They consider the use improper but have not seen fit to raise the issue.

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5. Whether the Co-Operative could be considered a facility necessary to the efficient conduct of Government business to the same extent as GSI is open to question. If the space contemplated for use of the Co-Operative is controlled by PBA, we shall almost certainly get opposition from the Buildings Management Office. The final answer, however, will probably have to be given by [redacted] office.

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6. If the Co-Operative is still being pressed and you wish to use Government space, let me know whether the space under consideration is under PBA control and whether you wish to go over PBA to the Federal Works Administrator for a final ruling. If not under PBA, please let me know who controls the space, and we shall try to obtain approval for its release.

LAWRENCE R. HOUSTON

LRH:mbt

~~CONFIDENTIAL~~

Alien Employ.

2 March 1948

MEMORANDUM FOR: CHIEF
PERSONNEL BRANCH

SUBJECT: Appointment of Naturalized Citizens and Aliens

1. Reference is made to your oral request for an opinion concerning the legality of appointing for duty in the continental United States an alien to be paid from vouchered funds. This matter is the subject of a memorandum, dated 3 January 1947, to the Deputy Executive for Personnel and Administration from this office. A copy of that memorandum is attached.

2. Section 202 of the Independent Offices Appropriation Act, 1948, approved 30 July 1947, contains language very similar to that of the 1947 Independent Offices Appropriation Act which is discussed in paragraph 3 of the 3 January 1947 memorandum. Section 202 further provides "this section shall not apply to citizens of the Republic of the Philippines or to nationals of those countries allied with the United States in the prosecution of the war".

3. You state the particular case involves a citizen of Russia who has filed his first papers, declaring his intention to become an American citizen, and that you wish to employ this individual for duty in Washington. It appears clear that a citizen of Russia is a national of a country allied with the United States in the prosecution of the war within the meaning of Section 202. (cf. Decision of Comptroller General, dated 7 April 1947, B-64711). Therefore, there would be no legal objection to the employment of a national of Russia for duty in Washington. Your attention is called to paragraph 4 of the memorandum of 3 January 1947 concerning appropriate security investigations and questions of policy.

4. The question of employing aliens is being considered in connection with the proposed legislation for CIA. The point will be discussed with the Bureau of the

~~CONFIDENTIAL~~

Employment of Aliens

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~~CONFIDENTIAL~~

Budget, together with other points in the proposed legislation. This office will advise you of developments concerning this particular point.

25X1A9a

[redacted]

Assistant General Counsel

Encl: 1
Copy of Memo of 3 January 1947

cc: Executive for A&M
Chief, B&F Branch

OGC:JSW/mes

~~CONFIDENTIAL~~

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No. 25

Chief, Administrative Staff, ORR 3 March 1948

General Counsel

Executive Order 9721

1. In accordance with a telephone inquiry from your office, we are forwarding a copy of Executive Order 9721, concerning the transfer of personnel to public international organizations.

2. We have not had occasion to study thoroughly the application of this Order to CIA employees on Schedule A. We note, however, that the employment rights cited in paragraph 3(a) of the Order are not limited to those with permanent status but are given to those with classified civil-service status. Thus, 3(a) and (b) would appear to be applicable to our situation. We shall be glad to work with the Personnel Branch, A&M, on any actual case which may arise through your office.

3. We note that Executive Order 9862 of 31 May 1947 extends provisions of E.O. 9721 to the transfer of personnel to the American mission for aid to Greece and the American mission for aid to Turkey. Furthermore, E.O. 9932, effective 1 September 1947, published 2 March 1948, makes similar provision under authority of the Foreign Service Act of 1946, for assignment of officers or employees of the Government to the Foreign Service as Foreign Service reserve officers. In this case, reinstatement at the end of the tour as Foreign Service reserve officer is governed by Section 528 of the Foreign Service Act of 1946, which provided that on termination the officer shall be entitled to reinstatement in the Government agency by which he is regularly employed in the same position which he occupied at the time of assignment, or in a corresponding or higher position. E.O. 9932 provides that, if the individual accepts a position elsewhere than in the Government agency in which he previously served or fails to avail himself of his reinstatement rights within thirty days, he waives his rights under Section 528 of the Foreign Service Act.

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4. We feel that each case arising in CIA should have full consideration by the Personnel Branch, A&M, and this office, to insure proper protection of the individual and the Agency.

LAWRENCE R. HOUSTON

LRH:mbt

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No. 27

Cia
Legal Dec Law
Finance

Executive for A&M

5 March 1948

General Counsel

Compensation (Death)

Designation of Beneficiaries

1. In order for beneficiaries to be entitled to death benefits under the Federal Employees' Compensation Act, it is necessary for them to file designations of beneficiaries with the Civil Service Commission. A case decided in the summer of 1947 made such filing a condition of payment. In that case, the agency concerned held the designation for three days, during which period the employee died. The Court's ruling was that settlement could not be made for failure to comply with the provision of law on a filing with the Commission. This case has been appealed three times, and the latest appeal is still pending.

2. To avoid prejudice to the rights of any CIA employee, we should comply strictly with the present interpretation of the law. The practical problem concerns security. This Agency wishes to avoid any arrangement which would make available to unauthorized persons a list of employees of CIA, or even an approximation of the personnel strength of the Agency. Consequently, the designations should not be forwarded to the Commission through our channels.

3. Mr. Warren Irons, who is Chief of the Retirement Section of the Commission, pointed out that the designation does not require identification of the agency for which the employee concerned works and may be forwarded in to the Commission directly by the employee. He suggested that such direct filing of the designations would not in any way prejudice our security. It is recommended, therefore, that the Personnel Division attempt to devise a system whereby all employees will file designations with the Commission without reference to CIA.

4. In order to protect the interests of our designees, we should have either duplicates on file, or a check list to insure that, in the event of death,

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the fact of death and the employee's status can be properly brought to the Commission's attention. Special circumstances may arise in connection with certain OSO employees, or others employed under special circumstances, which will require other arrangements. If such circumstances arise during a study of this problem, we shall be glad to assist in working them out in order to protect all employees.

5. We shall continue to follow the Court history of this situation in the event that a possible reversal will give more latitude in the manner of filing designations.

LAWRENCE R. HOUSTON

LRH:mbt

Compensation (Bonds)

Chief, Personnel Branch

15 March 1948

Assistant General Counsel

25X1A9a [redacted]

1. Reference is made to your memorandum to this office, dated 9 March 1948, concerning the above subject. The form 57 and Special Orders No. 43, dated 20 February 1946, enclosed in your memorandum are returned herewith. You request advice whether subject may be employed by CIA as a Consultant at $35.00 per day without making it necessary that he relinquish his retiremont pay while so employed.

2. It is obvious that Section 58 of Title 5 of the USCA is not applicable since Section 59 of that Title specifically states that Section 58 shall not apply to retired officers of the Army. There is for consideration whether that subject would come within the terms of Section 62 of Title 5, USCA. However, Section 62 provides that retired officers of the Army who have been retired for injuries or incapacity incurred in line of duty shall not, within the meaning of Section 62, be construed to hold or to have held an office during such retirement. Upon reading the retirement orders of subject (Special Orders No. 43, dated 20 February 1946), we feel that Lang does not hold an office within the meaning of Section 62. There remains for consideration, Section 212 of the Economy Act, included in the USCA as Section 59a of Title 5, which reads as follows:

> "#59a. Same: limitation of amount of retired pay as commissioned officer in the Army, Navy, Marine, Coast Guard, Coast and Geodetic Survey and Public Health Service. (a) After June 30, 1932, no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in Title 37, at a rate in excess of an amount which when combined with the annual rate or compensation from such civilian office or position, makes the total rate from both sources more than

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$3,000; and when the retired pay amounts to or exceeds the rate of $3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term "retired pay" shall be construed to include credits for all service that lawfully may enter into the computation thereof.

(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than $3,000: Provided, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part I, paragraph I. June 30, 1932, c. 314, #212, 47 Stat. 406, as amended July 15, 1940, c. 626, #3, 54 Stat. 761."

3. In 26 Comp. Gen. 501, dated 17 January 1947, it is stated that GAO has not had occasion to pass upon the question of whether an officer of the armed forces retired for disability, who is employed as a consultant upon a fee basis, holds a "civilian office or position", within the meaning of those words as used in section 212 of the Economy Act. The term "compensation" in its generally accepted meaning embraces both "fees" and "salary" as well as remuneration received in any other form for services rendered. The particular case cited is one in which the Veterans' Administration was involved, and the Comptroller stated:

"It would not appear the consultants the Veterans' Administration is desirous of employing in the instant matter will perform or supervise duties and responsibilities imposed by law upon the agency, or be under the administrative control of an official of the Government in the usual sense. On the contrary, it is understood that their employment will be in an advisory capacity".

The opinion goes on to state that their duties will consist primarily of expressing their views and giving their opinions and recommendations upon particular problems and questions presented to them for consideration in consultation or otherwise by administrative officers of the Government. Therefore, it is concluded in the opinion that employment by Veterans' Administration of former officers of the armed forces, retired for disability, as consultants upon a fee basis would not be in contravention of

Section 212 of the Economy Act -- no sound reason being perceived for regarding them as occupying an "office or position" within the meaning of those terms as used in said statute. The Veterans' Administration had specifically pointed out that the compensation of such consultants was based on a specific amount per visit as differentiated from a per annum, per diem, or other element basis.

4. In 26 Comp. Gen. 720, dated 31 March 1947, the Navy Department desired to employ a former Navy officer, retired for disability, by a personal service contract for employment. It was held that persons employed by contract to perform duties imposed by law upon an agency, and who are subject to control and supervision of administrative officers are employees holding positions under the United States Government. A naval officer retired for disability incident to the service but not in combat with the enemy, who is employed under a contract to perform purely personal services, is subject to the provisions of Section 212 of the Economy Act (5 USCA 59a).

5. Your memorandum of 9 March 1948 furnishes no indication of the proposed duties for [redacted] Consequently, this 25X1A5a1
office is not in a position to answer your specific question. There should be submitted a detailed explanation of the duties which would be performed by the subject. On receipt of such explanation, we shall be pleased to furnish you with our opinion whether or not it will be necessary that he elect to receive his retired pay or the proposed per diem of $35.00 per day as compensation for his services.

25X1A9a
[redacted]

General Counsel:JSW:mes
cc:
AM
[redacted] 25X1A9a

via Legal Div. (Memo 3 Jan 48)

17 March 1948

Executive for A&M
THRU: General Counsel
Chief, Budget and Finance Branch

Public Buildings (Equipment)

Ventilation in "Que" and "H" Buildings

1. It does not appear possible to effect payment for the installation of air-conditioning equipment or additional electric fans in the rooms of "Que" and "H" Buildings under existing law and regulations.

25X1A9a

2. Paragraph 8 of [redacted] memorandum is concurred in by this office with the exception that we are of the definite opinion that the Director should not approve an expenditure of this nature under his presumptive authority to certify payments without itemization since it is definitely contrary to the Act of October 26, 1942, and in any event any procurement or installations in this category would not remain the property of CIA but would revert to PBA under existing law.

25X1A9a

[redacted]

1. Concur with the statement of the Chief, Budget and Finance Branch above. The authority of the Director to certify to expenditures without revealing their nature has been given to provide secure financial support to the authorized operations of CIA, the confidential nature of which prevents release of information outside the Agency.

2. We feel it appropriate in this connection to point out the support given by the Comptroller General to our proposed legislation and to our operations in the past. We feel this support is largely due to the confidence that office has in the Director's administration of unvouchered funds, and we feel that this confidence is essential to the future of the Agency. If the Public Buildings Administration cannot supply adequate equipment, the only recourse would be to ask Congress for a specific appropriation to enable CIA or PBA to air-condition the buildings in question.

LAWRENCE R. HOUSTON

33

No. 33

Cia Legal Decisions (Memos) JSW

The Director

22 March 1948

Assistant General Counsel

Supreme Court Opinion in the Cases of Chicago and Southern Air Lines, Inc. v. Waterman Steamship Corporation and Civil Aeronautics Board v. Waterman Steamship Corporation.

1. In the above cases the Supreme Court of the United States was considering the question as to whether certain orders of the Civil Aeronautics Board were subject to review. The opinion was rendered by Mr. Justice Jackson on 9 February 1948.

2. In sustaining the position of the lower court that it could not review such provisions of the order as resulted from Presidential direction, the Court stated:

> "The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidence. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry."

3. The Court in the above case cited with approval the earlier case of United States v. Curtiss-Wright Export Corporation (299 U.S. 304, 1936) where the Supreme Court stated in

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connection with the powers of the President that:

> "He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results."

4. The above citations may be helpful should an attempt ever be made to force the Director to disclose confidential information against his will.

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[redacted]

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Legal Div. Cia Leg. Cmte (JFW)

Executive for A&M

General Counsel

~~CA April~~ 1948

Unvouchered Funds for [redacted] 25X1A8a

25X1A9a

1. Returned herewith is [redacted] memorandum of 1 April 1948 on the above subject, and also attached is a memorandum from the Chief, Budget and Finance Branch concerning the implementation of the project if authorized. The Chief, B&F Branch points out that the mechanics can quickly be carried out if the proposal is approved by appropriate authority. Since this expenditure is not authorized by regulations, the project should be submitted to the Projects Review Committee for recommendation to the Director in accordance with Administrative Instruction 60-2.

2. The proposed allocation could not be made out of Vouchered Funds. Unvouchered Funds are normally to be used only for support of confidential activities where security is of paramount importance. In view of the fact that the situation presented by [redacted] is primarily an administrative problem of an overt operation supported by Vouchered Funds, security does not appear to be a principal factor. 25X1A8a

3. The question for consideration by the Projects Review Committee, therefore, is whether the proposed expenditure is necessary to the extent that failure to authorize it would seriously impair the operations of the Agency. If the emergency is sufficiently serious to warrant an exception to the normal controls on Unvouchered Funds, there would be no legal objection to authorization of this allocation by the Director. We wish to emphasize our view that such relief for administrative problems by use of Unvouchered Funds, to avoid legal restrictions which prohibit the use of Vouchered Funds, should be limited to cases of absolute necessity. This is a proper point for consideration and recommendation by the Projects Review Committee.

LAWRENCE R. HOUSTON

LRH:mbt

~~CHIEF~~

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No. 36

Legal Dec. Dist. 9 Info

Files

16 April 1948

General Counsel

Disclosure of Information

1. At the request of Mr. George Gray of the Office of the Legal Advisor to the Department of State, a meeting was held in the IAPS Conference Room at 10 a.m. on 16 April 1948 to consider the subject of requests for information and subpoenas by committees of Congress. Those present were Mr. Alan Evans of the State Intelligence Research Division, Mr. George Gray of the State Department's Legal Advisor's Office, Colonel Blakeney of the Military Intelligence Division of the Department of the Army, Colonel Jordan of the Legislative Liaison Division of the Department of the Army, Captain Hylant from the Navy Department, Mr. Wilson from the Navy Department, Mr. Hollis from the Atomic Energy Commission, Mr. Houston and Mr. Pforzheimer of CIA.

2. The discussion was general of the problems involved in requests from the Congress for information. The internal handling of such requests by the different agencies was discussed, and it was found that the procedures were similar. In each case, there was a focal point for all responsible for handling all Congressional inquiries and for coordinating to get, first, a security ruling on the information required, and, secondly, a departmental policy rule. All present concurred that every effort was made in each case on a formal request from a committee to declassify, if possible, the material requested and to cooperate insofar as possible with the committee. All concurred further that under no circumstances would intelligence sources or methods be revealed. The special responsibility of the Director of Central Intelligence in this connection was mentioned by Mr. Gray.

3. Mr. Hollis mentioned that special legislation created a specific relationship between the Atomic Energy Commission and the appropriate Congressional joint committee. It was unanimously agreed that wherever possible, if the information concerned originated outside the agency, the inquiry was turned over to the originating office. If such outside information was so interrelated as not to be separable, clearance would have to be obtained from the originating agency before the information could be released.

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4. Various legal aspects of the question were discussed with the inconclusive result that the legal question of ultimate power to compel disclosure of information was still wide and that the question was still a practical one to be decided on the merits of each case. Some examples were explained and discussed. Mr. Evans pointed out that there had been, in the past year or so, one new and definitely troublesome development in that Congressional committees were more and more requiring their staffs to perform studies relating to international affairs and that the staffs, therefore, would come to the Department for intelligence information. Again, however, the question of how to handle the situation was more practical than legal.

5. The meeting broke up on the general understanding that there was no action which could be taken to change the current situation.

LAWRENCE R. HOUSTON

LRH:mbt

CSFD

20 April 1948

Assistant General Counsel

"Dependent" or "Dependency Status" from the Standpoint of Quarters and Cost of Living Allowance

1. The question has been informally presented as to what constitutes a "dependent" or "dependency status" from the standpoint of Quarters and Cost of Living Allowance. It is the purpose of this memorandum:

a. To discuss the foregoing by referring initially to sources in which these terms, or their equivalents, are used. (Paragraphs 2.(a) and 2.(b) are noted below merely because of certain similarities in language to Quarters and Cost of Living Regulations.)

b. To determine the subjects included.

c. To refer to interpretive precedent where available.

2. Reference is made to the following sources:

a. (1) Public Law 600, 79th Congress, provides in part as follows:

> "(a) Under such regulations as the President may prescribe . . . . the expenses of travel of himself and the expenses of transportation of his immediate family . . . ."

(2) Pursuant to the authority vested in the President, supplemental regulation, in the form of Executive Order 9805, was issued which defined "immediate family" as follows:

> "d. "Immediate family" means any of the following-named members of the employee's household:
>
> a. Spouse.
> b. Children (including stepchildren and adopted children), unmarried and under twenty-one years of age.
> c. Children physically or mentally incapable of supporting themselves.
> d. Dependent parents of the employee (but not of the spouse)."

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b. Pursuant to Title IX of the Foreign Service Act of 1946, the Secretary of State prescribed Travel Regulations, Sec. 103.605, which defined family as follows:

"(b) "Family" means any of the following named members of the household of the officer or employee:

(1) Wife.
(2) Children (including stepchildren and adopted children) unmarried and under twenty-one years of age, or physically or mentally incapable of supporting themselves, regardless of age.
(3) Dependent parents (including step-parents and adoptive parents) of the officer or employee (but not of the spouse).
(4) Husband who is physically or mentally incapable of supporting himself.

c. Pursuant to the Act of June 26, 1930 (46 Stat. 818), which authorized regulations for governing allowance for living quarters in the absence of officers or employees being furnished quarters, Circular No. A-8, Revised, was issued, defining family as follows:

"(d) "Family" means the mother, father, children, stepchildren, or sister of a married or unmarried employee living with the employee at the foreign post."

Circular No. A-8 provides further that one of the bases for granting a quarters allowance shall be the family status as defined above. Appendix II thereto gives administrative implementation to the foregoing by prescribing maximum allowance for rent, heat, fuel, and light on the basis of married, or unmarried with family, and single without family scale. It is to be noted that the only clause of limitation in this regard is "living with the employee at the foreign post".

d. The Secretary of State has adopted Bureau of the Budget Circular A-8, Revised, Part A, as a standard for granting quarters allowance, except as supplemented or modified by the Department of State Foreign Service Allowance Regulations. In this regard, it is to be noted that the latter Regulations, Section 108, paragraph 220, defines family as follows:

(1) Wife.

(2) In case of an officer who has no wife residing with him at the post, his mother or sister or daughter, regardless of age or dependency, who acts as his hostess.

(3) A child or stepchild or adopted child who is under twenty-one.

(4) A child or stepchild or adopted child who is over twenty-one, but mentally or physically incapable of self-support.

(5) A parent (including a stepparent or adoptive parent) who is principally dependent upon the officer or employee for support.

(6) A sister or brother who is principally dependent upon the officer or employee for support, and who is under twenty-one years of age.

(7) A sister or brother who is principally dependent upon the officer or employee for support and is over twenty-one but physically or mentally incapable of self-support.

(8) The husband who is physically or mentally incapable of self-support.

In this regard, it is to be noted that though the definition of "family" under the Department of State Foreign Service Allowance Regulations is more extended, the concept of "dependency" is an expressed condition in certain instances. Circular A-8 does not qualify the relationship.

e. Pursuant to Section 204 of the Act of July 30, 1947, (Public Law 269, 80th Congress), the benefits of Section 901 (2)(1) of the Foreign Service Act were extended to employees of all other departments. Since this was accomplished by Revision of Circular A-8, the extension of the term "dependent" as used in Appendix III, Schedules No. 1 and 2, thereof, can have no greater extension than the term "family" as defined in Circular A-8 proper.

f. Pursuant to the Foreign Service Act of 1946, Section 901 (2)(1), the Secretary of State prescribed certain post allowances for employees living at foreign posts, the amount of the allowance being based on the classification of the post, basic salary, and family status. Paragraph (d), hereof, indicates what constitutes a family from the standpoint of the Foreign Service Allowance Regulations.

It is to be noted in this regard that the prescribed forms for granting cost of living allowance recognize the difference between personnel with dependents and personnel without dependents. "Dependents" as used, however, can have no greater extension than the term "family" as defined in the aforesaid Regulations.

3. From the foregoing, it is clear that in certain instances, the mere existence of a stated relationship will entitle the officer or employee to travel or allowance benefits; whereas, in other instances, the status of dependency must be a necessary accompaniment of a stated relationship. Executive Order 9805 speaks of "dependent parents of the employee", and Department of State Travel Regulations speak in part of "dependent parents" (including those not of the blood), and "dependent husband" (due to mental or physical disability). In relation to quarters, Circular A-8, Revised, makes no mention of the term "dependent" but uses the term "living with the employee at the foreign post", and Department of State Foreign Service Allowance Regulations define "family" recognizing relationship plus dependency in several categories, and, apparently, in part, construing the phrase, "living with the employee at the foreign post", synonymously with dependency. In relation to post allowance, the comments made with respect to quarters are applicable. It is clear from the above that the basic concept has been laid down by statute, and that the administrative implementation has been left to designated authorities, whose definitions or administration of terms are not always uniform or coextensive.

4. In passing, it is noted that the basic statues have referred to the term "family" and left the administrative implementation to designated authorities. In the past when Congress defined the term "dependent" to include parent, mother, or father, the Comptroller General has consistently held that had Congress intended more; i.e., other than natural parents, it would have expressly so provided. This principle of interpretation should likewise be followed in the interpretation of administration regulations unless otherwise clarified.

5. It has been held in establishing the dependency of a mother than in any case where the income and the value of other elements entering into the cost of living expenses regularly received by the mother from other sources is greater than the value of the contributions received from the officer, the mother is not dependent upon the officer for her chief support. (2 C.G.41) In a similar case, 20 C.G. 400, the Comptroller General had occasion to comment upon the term "dependent". Involved was Section 4 of the Act, 37 USCA 8, defining dependent as follows:

> "That the term "dependent" as used in the succeeding sections of this Act shall include at all times and in all places a lawful wife and unmarried children under twenty-one years of age. It shall also include the mother of the officer provided she is in fact dependent on him for her chief support."

"In Rieger v. U.S., 69 Cl. Ch. 632, it was said at page 637, after quoting Section 4 of the Act:

"As was said by this court in Freeland v. United States, 69 C. Cls. 364:

'It is difficult to standardize the facts which disclose a condition designated in the law as "chief support" '.

Each case must stand upon its own particular facts. No hard and fast rule can be laid down arbitrarily fixing the value of property owned, or the amount of income received by a mother, as entirely determinative of the question of whether she is dependent within the meaning of the statute.

We think the words "chief support" used in the statute should be given their ordinary and well-known meaning. "Chief" support means "main" support or "principal support. We think a mother is dependent for her "chief support" if some one else is required to furnish most, or the greater part, of the funds necessary for her reasonable support.' "

The close correspondence between the phraseology of this quoted decision and certain language in the Foreign Service Allowance Regulations of the Department of State is to be noted. It is basic to a consideration of this matter, that the certifying officer must have supporting evidence sufficient to establish the status of dependency from a factual standpoint.

As has been illustrated, the Department of State has apparently limited the extension of the term "family" with respect to quarters and allowance by introducing the element of "dependency" in certain categories. On the other hand, under Circular A-8, the language of which at least is followed in Agency instructions, the stated relationship, plus actual residence with the employee at the foreign post, with nothing more, is sufficient to give rise to application for the benefits of quarters allowance, though the recipients of the cost of living allowance are supposedly limited administratively by the application of Schedules 1 and 2, Appendix III, Circular A-8.

With respect to cost of living allowance, however, the granting of the benefits results from the application of schedules which are based on "with dependents" or "without dependents". With respect to quarters allowances, however, there is no such qualification, either in the scales or in the regulations, where relationship and residence alone would appear to give rise to the benefits.

It may be for consideration in the administration of the above that the employee be required to establish a pre-existing bona fide family relationship, as defined, prior to embarking for Foreign Service duty, or in other words, the phrase, "living with the employee at the foreign post", should be a continuation of a prior dependent family relationship, as defined, and not a family accumulated for the purpose of acquiring statutory or regulatory benefits. It is recognized that circumstances may arise requiring an individual to assume the reins of the family from necessity. These are excluded from consideration.

6. The availability of administrative precedent and interpretation under present procedures is somewhat limited, and qualifications other than those discussed above may exist.

7. The Department of State application form for allowance of quarters and cost of living requires that the employee or officer entitled thereto indicate the percentage of dependency of each dependent claimed. This is particularly in line with the term "family" as defined in Foreign Service Allowance Regulations. The administrative implementation of Circular A-8 requires no such percentage breakdown. In both cases, however, no information other than a general certificate by the employee is required. In instances where the appropriate administrative official is confronted with a questionable case, or a percentage breakdown, or it is generally determined that a factual substantiation is desired, it may be desirable to require the employee to file an affidavit with the application for allowances, which affidavit might carry the following suggested topics:

a. That the member of the "family" is residing with the employee or officer not for the purpose of receiving any personal or pecuniary advantage, either in the way of increase in allowances, or otherwise.

b. That the relationship between employee or officer and member of his "family" is a continuation or a prior existing dependent family relationship, and not an acquired family for the purpose of being eligible for allowance benefits.

c. That sole source of allowance benefit from "family status" is derived from Government and no reimbursement or recoupment therefor, directly or indirectly, in any manner or form whatever.

d. Value and net income from all assets of dependent, real and personal, tangible and intangible.

e. Income of dependent from all other sources, including contributions from member of family for one year preceding this affidavit.

f. Average monthly living expense of dependent during last year.

g. Contributions, money or otherwise, or income received by dependent from officer or employee claiming allowance.

h. Other material facts tending to establish status of dependency.

8. The above elements are suggestive, of course, and undoubtedly can be expanded and others added. This office would be pleased to assist you in developing such documents as are considered necessary to evoke pertinent information.

25X1A9a

[redacted]

General Counsel:JBK:mes

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Chief, Special Procedures Branch 22 April 1948

General Counsel

Individual Accountability for Expenditures of Special Funds

1. The question concerning relief of individuals from accountability for unvouchered expenditures, raised in your memorandum of 11 March, goes to the basic principles controlling the granting and use of Government funds for which no detailed accounting is made outside the Agency. No such question is pertinent in connection with normal vouchered Government expenditures, as there the statutes and regulations must be followed strictly, and any deviation either through mistake, bad judgment, or fraud, will cause the General Accounting Office to take an exception to all or part of the expenditure.

2. The Comptroller General is the official representative of Congress to review the expenditures of the executive departments and agencies and is responsible only to Congress. His ruling on the propriety of expenditures normally is final and may be, and occasionally is, in direct contravention of decisions of the federal courts. Neither he nor his agency, the General Accounting Office, has any direct collection power. He may only withhold any payments due from the Government, other than normal Government salaries during the period of employment, to offset against amounts he determines are due to the Government. However, an exception to a voucher implies liability both to the individual creating the obligation and to the officer who certifies the voucher. If collection from the individual is indicated, the General Accounting Office may demand payment but can enforce the demand against that individual only by reference of the case to the Department of Justice for collection through the courts.

3. The granting of unvouchered funds is a recognition by Congress that certain activities of the executive branch should not be scrutinized by GAO, their representative. The usual manner of making such a grant is to provide that the certification of the head of the agency concerned will be a sufficient voucher for the expenditures stated therein.

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The Congress has emphasized time and again that this places the entire responsibility on such agency head and on him alone. He may delegate administrative authority for the use and control of the funds, but he may not divest himself of responsibility. His certificate states that the expenditures set forth therein have been properly expended for authorized official activities of his agency. The Comptroller General cannot go behind this certification.

4. In theory, therefore, the Director of Central Intelligence has absolute power over the unvouchered funds available to the Agency. Since he must return each year to Congress for additional funds and must submit a detailed budget to the Bureau of the Budget and the committees of Congress, it is obvious that, if there were not complete confidence in his administration of unvouchered funds, no more would be forthcoming. His power, therefore, is limited by what is proper to support the authorized activities of the Agency.

5. In the matter of this propriety, he has, of course, great latitude, but the discretion is, like the responsibility, his alone. To avoid the impossible task of checking each expenditure, he must set general rules and standards for the purposes for which he wishes unvouchered funds expended and for the administration, control, and review of such expenditures. Once established, deviations from these standards may be made only with the Director's personal approval. It has been his stated policy that such approval is to be obtained in advance. There is no question, however, of his authority to approve an expenditure after it has been made. He has placed responsibility on his administrative officers and the Special Funds Division to see that expenditures come within his standards. Any question in their minds, they may refer to him or to this office, which, in general, acts somewhat as a Comptroller General but has merely an advisory function and no final authority to withhold payment.

6. In view of the responsibilities and administrative procedures outlined above, it is incumbent on each officer of CIA in charge of any operations to get approval in advance in accordance with the Director's regulations for any project requiring the expenditure of unvouchered funds, except where such advance approval is patently impossible. CIA Administrative Instruction 60-8 specifies that all projects involving the expenditure of funds not provided for in the

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regular budget shall be reviewed in advance by the Projects Review Committee for recommendation to the Director. Projects within OSO are not submitted in detail, and the ADSO is given wide discretion to approve specific projects from funds allocated to his office with the approval of the Director.

7. Presumably, any project initiated by you would be within the scope of your office, as set forth by the Director and the ADSO. No expenditures could be made until the project had been approved by the ADSO, and upon expenditure, your office would be required to submit accountings which would be audited in the Special Funds Division and, if proper, would be certified for payment. The payment when made would be entered on a schedule of disbursements which are periodically totaled and vouchers for the amounts involved prepared for each agent-cashier. This blanket voucher is then submitted to the Director, who signs a certificate thereon stating that payment has been made for proper purposes, the nature of which cannot be revealed for reasons of security in the national interest. This is the certification behind which GAO cannot go. By signing it, in effect, the Director assumes personal responsibility for the propriety of all expenditures stated therein.

8. As pointed out above, he may not divest himself of, or delegate, this responsibility, and the only relief for him would be a showing of fraud on the part of one of his subordinates of which he could not be expected to have knowledge. In the absence of fraud, it is our opinion that this certification administratively settles all questions of bad judgment or error resulting in actions such as the examples mentioned in your memorandum of 11 March. This is based on the theory that the Director has available enough checks so that the question of judgment or error, if it existed, would be raised. Thus, he has his auditors, certifying officers, Special Funds officer, the ADSO, the Executive for Inspection and Security, and the General Counsel's office, all with a right to question any doubtful expenditure. If a question is raised, the Director can do only two things -- he may either refuse to approve the individual's voucher and indicate that the individual should be held personally liable, or may condone and approve the expenditure, thereby assuming responsibility for whatever question there may be as to propriety of the expenditure. Once he has approved the payment, it is difficult to see how, as a practical matter, the subordinate could be held personally liable. The Comptroller General

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and the GAO are bound by law to accept the Director's certification. The Department of Justice would have no way of obtaining jurisdiction unless a charge of fraud were referred to it.

9. A Congressional committee could conceivably question the transaction, but this point is confused by the undetermined problem of the release of documents and information in the custody of the executive branch to the legislative branch. In practice, the pertinent information would not normally be released to them, nor would they try to force it. Assuming, however, that a committee obtains the facts and questioned the judgment of a CIA employee, they cannot of themselves take action to impose liability. They could refer the matter to the Department of Justice, who would be bound, we feel, to accept the administrative determination of the head of this Agency. Even assuming that the Department of Justice took the matter to the courts for imposition of liability, there is an interesting and unresolved question of whether any court could, or would, hear the matter. Two decisions of the Supreme Court in cases arising out of employment of spies during the Civil War indicate not. In both cases, the spy claimed he had been promised more than had been paid to him. In its first holding (Totten, Administrator vs. U. S.; 92 U. S. 105, 10 April 1876), the Supreme Court stated that inasmuch as the whole transaction had its inception in secrecy in the interest of national security, "Both employer and agent must have understood that the lips of the other were to be forever sealed respecting the relation of either to the matter." Therefore, "The secrecy which such contracts impose precludes any action for their enforcement."

> "It may be stated as a general principle, that public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law regards as confidential, and respecting which it will not allow the confidence to be violated. On this principle, suits cannot be maintained which would require a disclosure of the confidences of the confessional, or those between husband and wife, or of communications by a client to his counsel for professional advice or of a patient to his physician for a similar purpose. Much greater reason exists for the application of the principle to cases of contract for secret services with the government, as the existence of a contract of that kind is itself a fact not to be disclosed."

In the later case (De Arnaud vs. U. S.; 151 U. S. 483, 29 January 1894), the Supreme Court apparently qualified its position on the point of jurisdiction. Since there were two other valid defenses not involving secrecy, it dismissed on those grounds rather than rule that no action could be brought. But the Court specifically said that the doctrine of the Totten case was not impugned, and if they had found it necessary to rule on the point, they would have difficulty distinguishing the two cases on De Arnaud's claim that he was a "military expert", not a "spy". Included in the opinion is a quote (p. 490) from the report of the Auditor to the Second Comptroller:

> "Accounting officers have no jurisdiction to open up a settlement made by the War Department from secret service funds and determine unliquidated damages."

10. It will be noted that both of these cases are suits against the Government. Two modern holdings, however, indicate that the Supreme Court's attitude has not changed in this respect. In U. S. vs. Curtiss-Wright Export Corporation, (299 U. S. 304, 21 December 1936), the defendant was prosecuted for violating an Executive Order preventing export of arms under a joint resolution of Congress, which made disregard of such an Order a crime. The defense contended that the delegation to the President by joint resolution of discretionary power to control such exports was unconstitutional. The Courtdiscussed at length the division of powers under the Constitution and the responsibility of the Executive Branch for Foreign Affairs. It pointed out, for the maintenance of international relations, Congress must often accord to the President a degree of discretion and freedom from statutory restriction which would not be permissible were domestic affairs alone involved. The Court stated:

> "Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results."

The above case is quoted with approval in the recent case of Chicago and Southern Airlines against Waterman Steamship Corporation (68 Supreme Court 431, 9 February 1948), wherein the Court was asked to review an order of the Civil Aeronautics Board on an application to engage in overseas and foreign air transportation. The Civil Aeronautics Act authorized judicial

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review. The Court held that in spite of the blanket authorization, the courts properly limited themselves to review only certain fields. In particular, it said that where such a Board as the CAB changed its orders at the direction of the President, citing as cause certain factors relating to the national welfare and other matters for which the Chief Executive has special responsibility, the Court would not review those changes. The opinion stated in part:

> "The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information held secret. Nor can courts sit in camera in order to be taken into Executive confidences. But even if courts could require full disclosure, the very nature of Executive decisions as to foreign policy is political, not judicial . . . They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry."

11. We feel that it is clearly indicated by the above four cases that the courts will not hear matters arising out of the confidential operations of the executive branch in connection with foreign intelligence. We realize that there are a certain number of ifs and buts in the above discussion, but it is our considered opinion that once the Director has assumed the responsibility, it would be, as a practical matter, impossible for any other officer or agency of the Government to impose a personal liability on an employee of CIA in the absence of fraud.

12. Aside from the straight expenditure of funds, there is, of course, the problem of responsibility for valuable equipment which may be lost as the result of a risky operation. Assume the risk was so great that the jeopardizing of equipment raised the question of bad judgment. Here again, the project would need proper approval, and upon establishment of the loss, the case would be referred to the Property Survey Board of OSO. This Board would make its findings and would recommend to the AD/SO. He has been delegated authority by the Director to relieve responsible or accountable officers in his discretion. If

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he refused so to relieve the employee, the latter could appeal to the Director. If cleared either by the Director or by the ADSO, under his delegated authority, we know of no way by which any outside officer or agency could go behind this administrative determination to impose pecuniary liability. There are many parallels to this situation, particularly in the Military Establishment. I am not aware of any case of liability being imposed for bad judgment alone, without fraud, when the administrative relief has been approved. In addition to security aspects, the head of any executive department is authorized to make regulations for control of property and determination as to individual fault in the event of loss or destruction (31 U. S. C. A., 89 and 92).

LAWRENCE R. HOUSTON

LRH:mbt

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Legal Decisions Disclosure Suit

Ernest A. Gross, The Legal Advisor
Department of State

28 April 1948

General Counsel
Central Intelligence Agency

Production of Records

1. Thank you for the copy of your memorandum of 15 April on the question of production of records at the request of Congressional committees.

2. In the event that you have not yet seen it, I am forwarding herewith the House Report to accompany House Resolution 522, directing the Secretary of Commerce to produce a letter relating to [redacted] 25X1A9a I might also mention the recent case of Chicago and Southern Airlines against Waterman Steamship Corporation (68 S. Ct. 431, 9 February 1948), in case it has not come to your attention. This follows the lead of U. S. against Curtiss-Wright, discussed by you, and the language in paragraph 8 on page 436 is particularly interesting.

3. There is further an article which you may have seen by Robert Maydock (now in Mr. Forrestal's office) in the Harvard Law Review for February 1948, entitled "Some Evidentiary Problems Posed by Atomic Energy Security Requirements". This is particularly interesting, in view of Admiral Gingrich's comments at our meeting here the other day.

4. With your permission, I will keep the copy of your memorandum for my files.

LAWRENCE R. HOUSTON

LRH:mbt

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Legal Decision
Tort Claims

Executive for A & M 4 May 1948

Assistant General Counsel

Accident case of [redacted] 25X1A9a

1. Attached herewith is the complete file in the accident case of [redacted] driver of a CIA car which struck a taxicab in Maryland. 25X1A9a

2. This case has been before you before, but was returned by you to the investigating officer to determine the legal speed limit at the point of accident and to secure additional information as to possible negligence on the part of the CIA driver, [redacted] 25X1A9a

3. I have talked with [redacted] who was a passenger in the CIA car at the time of the accident, and find that he now has changed several of the statements in his undated memorandum which was forwarded in the original file. Mehring reaffirms the fact that the driver was going no more than 30 miles per hour and at what, to him appeared to be a reasonable speed under the circumstances. [redacted] states, however, that his original statement that the taxi was about "200 feet" ahead was an error and should have read "20 feet". [redacted] also disclaims any recollection as to whether or not the light "had just turned red" or was still green. He does state that the driver's application of his brakes was useless, as they did not hold on the slippery pavement. 25X1A9a 25X1A9a 25X1A9a

4. As the accident in question occurred in Maryland, Maryland law and cases would be controlling. In reaching your conclusions on the facts in this case, the question that you must decide is whether the CIA driver exercised due care under the circumstances. The first of these circumstances to consider is the question as to whether the CIA driver's rate of speed was excessive, considering the weather and traffic conditions. The second of these circumstances involves the question as to whether, in view of the conditions of the road, he was justified in following so closely upon the taxicab, trailing the latter on his own admission at about 15 or 20 feet. If you find that [redacted] was not driving at an excessive rate of speed, and that he was not following too closely upon the taxicab under existing conditions, and that under these conditions his car was under proper control, the claim of the taxicab owner must be rejected on the grounds that 25X1A

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there is not sufficient evidence available upon which CIA liability can be predicated. If, on the other hand, you find that there is negligence on the part of the CIA driver, then the taxicab claim must be considered.

5. The speed limit at the point where the accident occurred is reported by the investigating officer to be 30 miles an hour. [redacted] the CIA driver, states that he was "travelling at 20, 22, and 25 miles per hour" stepping up his speed to between 25 and 30 miles an hour to pass two vehicles shortly before striking the taxicab. His passenger, [redacted] as set out in Par. 3 above, stated that he did not think the driver was going over 30 MPH", which [redacted] substantiated in a conversation with the undersigned. Therefore, from all available testimony, [redacted] did not exceed the legal speed limit.

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However, this is not completely determinative, for the Maryland Motor Vehicle Law (Acts of 1943, Ch. 1007, Sec. 157) provides that -

> "No person shall drive a vehicle on a highway at a greater speed than is reasonable and prudent under the conditions then existing."

It is therefore necessary for you to determine whether the CIA driver was driving not only within the speed limit, but also at a speed that was "reasonable and prudent" at the time of the accident, all weather and traffic conditions being considered.

6. The Motor Vehicle Law of Maryland states that (Acts of 1943, Ch. 1007, Sec. 169(a)) -

> "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

The basic duty in this connection has been stated as

> "the duty of the rear driver to keep a safe distance between vehicles, and to keep his machine well in hand, so as to avoid doing injury to the machine ahead. . ." (Huddy: 3-4 Automobile Law 195 (9th ed.))

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This rule is further elaborated to hold that -

> "The only rule that can govern the interval to be maintained is that of reasonable care under the circumstances. The more fact that a vehicle is moving in close proximity and keeping up with it does not of itself constitute negligence." (2 Blashfield: Cyclopaedia of Automobile Law, Sec. 942).

25X1A9a [redacted] statement is that he was travelling between 15 and 20 feet behind the taxicab at the time of the accident. His passenger testifies that the distance was also approximately 20 feet. It is therefore necessary for you to determine whether, under the given circumstances as to traffic and weather conditions at the time and place of the accident, the distance between the two cars should be considered "reasonable and prudent" within Sec. 169(a) of the Maryland Motor Vehicle Law.

7. The statements of the CIA driver and his passenger, 25X1A9a [redacted], tend to indicate that [redacted] put on his brakes but 25X1A9a that this was useless for quick stopping due to the icy condition of the road. The brakes evidently did not hold immediately, with the result that the CIA car skidded into the taxicab.

In a leading Maryland case involving skidding on a wet street, (Fillings v. Dichlman, 168 Md. 306, 177 Atl. 327 (1935)) the Maryland Court of Appeals stated -

> "It is conceded and indisputable, that the skidding of an automobile is not in itself sufficient to justify an inference of negligent operation. . . . But such an inference is permissible when the skidding results from the driver's negligent disregard of conditions by which such a risk is created or increased."

In another case in the Maryland Court of Appeals, (Baltimore Transit Company v. Alexander, 172 Md. 454, 192 Atl. 349 (1937)), it was pointed out that -

> ". . .while reasonable care on the part of an operator of a motor vehicle requires that he have the vehicle under such control . . . that the vehicle may be stopped if necessary to avoid a collision . . . the control must be a reasonable control, depending upon the circumstances and not an absolute control so that the motor vehicle may be stopped immediately under all circumstances.

Traffic regulations permit a speed which makes it impracticable for even a motor vehicle of low tonnage to be stopped instantly. The law of physics will not permit it."

In the case of Vizzini v. Doolin, 176 Md. 639, 6 Atl. 2d 637 (1939) where the road was impaired by rain, sleet and freezing conditions, the Maryland Court of Appeals stated -

"When weather conditions or darkness are such as to interfer with or shorten the view of the road, it only serves to increase the degree or care required of a driver . . ."

In the case of Wolfe v. State, 173 Md. 103, 194 Atl. 832 (1937), the Court stated that -

"Skidding is not in itself, and without more, evidence of negligence, . . . nor is more speed, certainly within lawful limits, apart from the circumstances in connection with which it is considered ordinarily evidence of negligence, . . . Both take color and significance from the facts and circumstances which attend them, and either may be evidence of negligence. Skidding may be evidence of negligence if it appears that it was caused by a failure to take reasonable precaution to avoid it when the conditions at the time made such a result probable in the absence of such precaution. Speed may be evidence of negligence where it appears that under the circumstances it was likely to endanger others who were in the exercise of due care. . . . The modern automobile, because of its speed, weight, power, and design and the operation of physical laws, is peculiarly subject to the danger of uncontrollable and erratic deviations from its ordinary course. Since it is held on its course by the traction between its tires and the road surface, whatever lessens that traction makes it more difficult to control, and increases the hazard of its skidding. That tendency, because of the power, weight, and potential speed of such machines, carries a constant threat to all users of modern highways and imposes upon the drivers of automobiles the duty of exercising at all times care and vigilance to avoid increasing the danger of skidding created by any condition of the road surface which lessens the traction or grip of the machine on it by adapting the management of

the car to the conditions. It is a matter of common knowledge chargeable to every one who operates an automobile on a public highway that the danger of skidding on a wet slippery surface increases as the speed increases. And not only does the probability of skidding increase under such conditions as the speed increases, but the seriousness of the possible consequences to other users of the highway increases proportionately. It is also obvious that any sudden swerving from a straight line by an automobile driven at high speed over a wet slippery street increases the probability of skidding, and that the driver is therefore under a constant duty to use all reasonable care to discover and avoid conditions which may require such a movement. . . .

"Applying these principles to the facts of the case, there can be no reasonable doubt that the evidence was sufficient to support a finding that the collision was caused by the defendant's negligence. In valuing the sufficiency of the evidence for that purpose, the truth of so much of it as tends to support that hypothesis, together with such inferences as may naturally and legitimately be deduced therefrom, must be assumed. . . ."

25X1A9a

8. It is therefore necessary for you to determine whether [redacted] conduct was inconsistent with the exercise of that degree of care which the law required of him under the circumstances, or whether it was sufficient in law to permit the inference that his management of his car was not the direct and proximate cause of the collision.

25X1A9a

9. To recapitulate, it will be necessary for you, in the light of the above, to reach your determination upon certain basic questions in order to determine whether or not [redacted] was negligent to a degree which would make this Agency liable for the taxicab claim.

25X1A9a

a. Was [redacted] driving at a "reasonable and prudent" rate of speed, taking into consideration traffic and weather conditions at the time and place of the accident?

25X1A9a

b. Did [redacted] have his car under sufficient control just before and during the time of the accident?

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c. Was the skidding produced by the fact that his car was not under reasonable control therefore making it necessary to slam on his brakes in an emergency manner, thus causing the skid?

25X1A9a

d. Was [redacted] following the taxicab at a "reasonable and prudent" distance at the time and place of the accident, taking all the circumstances into consideration?

e. Was the traffic light green or red? 25X1A9a [redacted] says it was green, [redacted] says it had just turned red but now states that he did not notice, the taxi driver said it was red, and his passenger said they had stopped at the light and were waiting for it to change? 25X1A9a

f. If the light was red, should [redacted] have seen it in time to have come to a reasonable stop? 25X1A9a

g. Was the driver of the taxicab driving in a "reasonable and prudent" manner, taking all factors into consideration? Did he give timely warning of his turn and timely warning of his stopping?

h. Was the taxi's stopping a quick emergency stop, of such a nature that it could be considered a contributory cause of the accident?

i. In the light of all of the circumstances, 25X1A9a was [redacted] driving in such a negligent manner as to cause the accident?

Walter L. Pforzheimer

WLPforzheimer:blc

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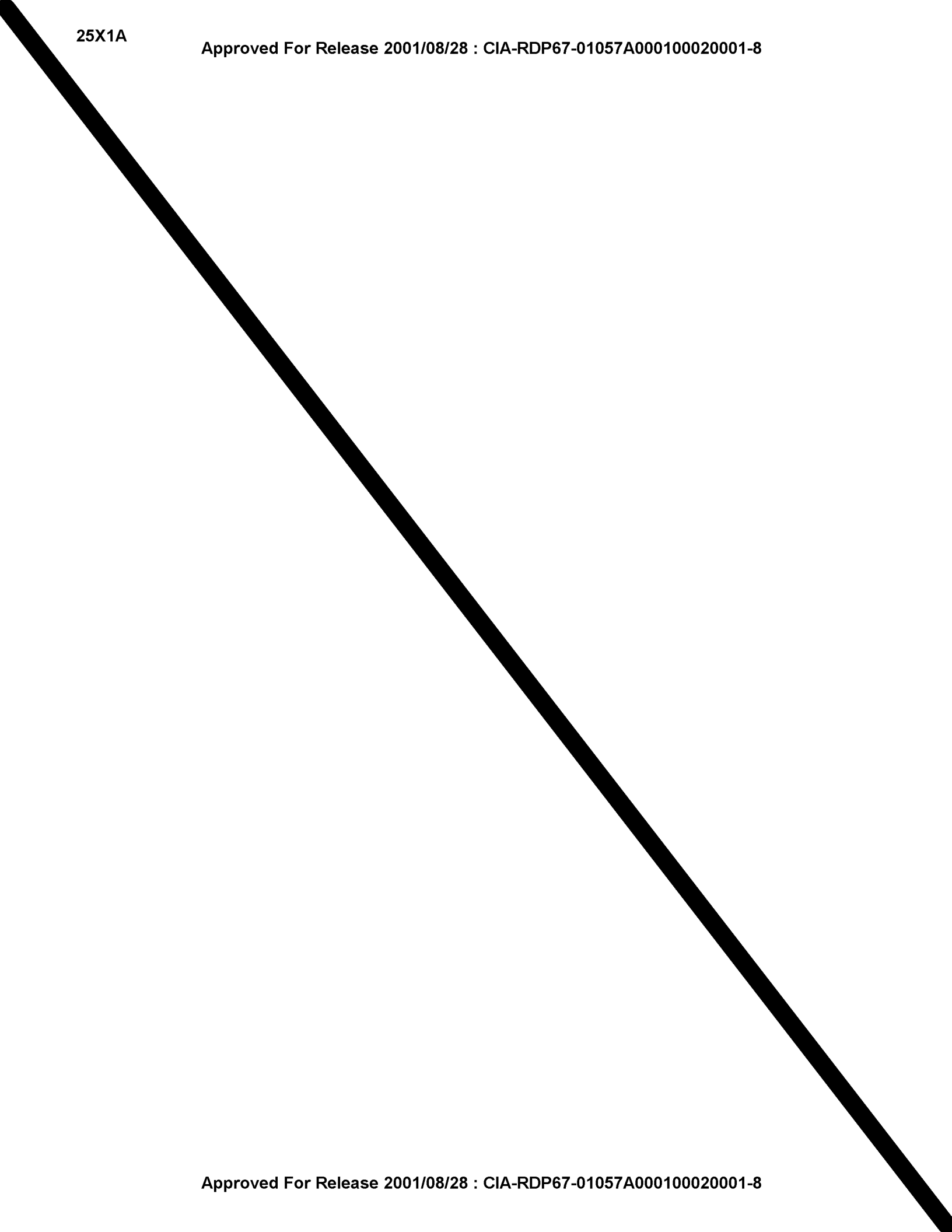

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of language and the ensuing controversy might have been eliminated by the insertion after the phrase, "it shall be the duty of the Agency", the following words: "and the Director is hereby empowered", or some other such phrase indicating the intent of Congress that the Director was to have a controlling voice in the coordination, subject to the direction of the National Security Council.

d. The collection functions of CIA are provided for only in the general provision, "to perform, for the benefit of existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally and to perform such other functions and duties related to intelligence affecting the National Security as the National Security Council may from time to time direct". It is known that Congress intended by these phrases to insure control of clandestine intelligence by CIA but considered that security aspects prevented its being spelled out in the language of the law. Lack of such specific direction may be considered a weakness in the National Security Act of 1947 that deserves further consideration by the Congress.

LAWRENCE R. HOUSTON

Property

Legal Decision

The Director

14 May 1948

General Counsel

25X1A9a

Report of Survey [redacted]

1. As head of an independent executive agency, you are authorized to establish rules and regulations for the protection and control of Government property. Under this authority, you have established the SO Property Survey Board, whose action is normally final in clear-cut cases. In all cases, however, and particularly in borderline situations, you have final power to relieve or certify to liability.

2. Where the head of an agency has relieved a responsible or accountable officer, I am aware of no case where, in the absence of fraud, there has been a subsequent attempt by any other branch of the Government to hold the individual liable. On the other hand, your certification as to liability would normally be accepted by the other departments and agencies of the Government.

3. The situation here, of the jeep being stolen from a private parking place, is a familiar one. The circumstances in each case vary, indicating negligence to a greater or less degree. The point where negligence becomes sufficient to impose liability is one of the most difficult of all legal points to determine, and in the courts is frequently left to the jury. But the judge may instruct the jury somewhat as follows:

> If an ordinary reasonable man, in the circumstances here described, should have realized that his actions might lead to a loss of this type and such loss did then occur as the direct result of his acts, or failure to act, he may then be held liable for the loss.

4. This case has received careful consideration, and there is no indication that there are any further facts or extenuating circumstances to be considered. Since each case is so definitely affected by local conditions, considerable weight should be given to the original Report of Survey. The main point brought out

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25X1A9a

by [redacted] in his appeal is that since he had parked under similar circumstances before, he had no reason to feel that the attendant would not fully safeguard the vehicle. In view of this, the real question is: Was he reasonable in such a belief, or should he have realized that in the local circumstances then prevailing, his precautions were not adequate? The SO Property Survey Board considered this question and approved the Surveying Officer's finding that insufficient precautions were taken.

LAWRENCE R. HOUSTON

LRH:mbt

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No. 66

Chief, FBIB
Thru: ADO

17 May 1948

General Counsel

Vehicles (Purchase)

Purchase of a 12-passenger suburban bus

1. Attached is a memorandum for the Director from the Chief, Services Branch concerning the requisition from your office of a 12-passenger suburban bus for transportation of employees to and from the station to be established at [redacted]. You will notice the remarks of the Chief, Services Branch and particularly the wording of the law therein quoted, which specifies that the approval of the head of the department is required for such procurement, and then it is permissible only under certain circumstances.

25X1A6a

2. It is felt that the Director cannot properly determine whether this is a suitable case for his approval without further information and justification. We feel it would be appropriate for you to supply a memorandum of the facts tending to bring this situation within the quoted statute. It is suggested that a memo be submitted, outlining the circumstances including such information as the nature of the activity, the fact that employees live in Washington, the distance of the station from Washington, an approximation of the number of employees who cannot supply their own transportation, the type of public service and the schedules of public transportation with comments as to its adequacy or inadequacy in view of the needs for twenty-four hour operation, and any other facts which in your opinion tend to support this requisition. Upon completion, this memo may be sent directly to this office, as the Chief, Services has already concurred in this procurement.

LAWRENCE R. HOUSTON

LRH:mbt

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Legal Decisions

No. 67

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Files

DATE: 23 June 1948

FROM : [redacted] 25X1A9a

SUBJECT: Use of Appropriated Funds for Payment for Services of a Personal Nature

1. The availability of current appropriations for the payment of salaries of mess personnal and the probable purchase of facilities for the use and benefit of [redacted] personnel 25X1A7b assigned to areas outside the continental United States has informally been considered by this office.

2. It may be stated as a general rule that the use of appropriated funds for objects not specifically set forth in the Appropriation Act is unauthorized unless it follows by necessary implication that the object not specified bears a direct connection with and is essential to the accomplishment of the purposes for which the funds were appropriated. (CG B-73234)

3. That the availability of appropriations for the purposes here concerned is unauthorized, in the absence of express stipulation, is clear from (i) decision of the Comptroller General, (ii) language of the current appropriations acts, (iii) the application of general prohibiting statutes.

a. In 13 CG 49, the extension of the officers' mess, Navy Department, from shipboard to shore, under compelling reasons, evoked the following comments from the Comptroller General:

> "As hereinbefore stated, there is no law or legal regulation which recognizes officers' messes as of a public character, and the inhi-

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hibition in question in the current appropriation act is intended to stop the practice of detailing enlisted men to prepare and serve food to officers' messes not recognized or authorized by law or legal regulation. If the officers are required or permitted to subsist themselves ashore, it is a private mess notwithstanding the officers may technically be on sea duty. Decision A-38907, December 1, 1931. The purpose of the inhibition on pay and allowances of enlisted men in the proviso in question, as shown in the legislative history and the status of the law then in force, is to prohibit the detail of enlisted men and civilians in naval service to perform for officers duty of a private or personal character as contrasted with public duty."

In the same decision, the Comptroller General, quoting from Williams v. United States, 44 Ct. Cls. 175, emphasized the difference between shipboard and voluntary messes, and the necessity of positive legislation in the matter:

"Section 1115 and 1120, Navy Regulations of 1900, as well as 1905, have reference only to officers' mess on board ship, and whatever practice may have grown up respecting the detail of enlisted men on shipboard to prepare and serve food to the officers thereof can have no application to officers' mess on shore, nor is there any law authorizing the regulation of officers' mess on shore. Officers on shore are at liberty to get their meals when and how they please, and if for economical reasons or otherwise unite in forming a mess on shore that is their own concern and no regulation respecting it other than that of their own making is required, and membership therein is entirely optional with them."

b. The use of appropriated funds for the furnishing of personnel and facilities for the operation of messes, all things being equal, does not flow by necessary implication, nor is it tenable on the basis of a specific appropriation justifying reasonable and necessary incidental

expenditures essential to the accomplishment thereof. Specific purpose language is not discoverable in the current appropriation which would warrant a characterization of the subject concerned as a reasonable and necessary incidental. Moreover, the fact that the work of the [redacted] has been carried on since its inception without such special services demonstrates that the proposed expenditures are not essentially requisite to the accomplishment of the statutory purposes of the appropriations available to CIA, and, obviously, were not within the general contemplation of such appropriations. Where Congress clearly intends that an appropriation shall be available for mess service and facilities, it does so by express language. A recent appropriation act serves further to confirm the principle that where benefits not strictly of a public nature are involved, the express authorization of Congress is required:

25X1A7b

> "Public Law 597 - 80th Congress. Title I - Foreign Service Salaries and Expenses, F.S. * * * and the operation and maintenance of commissary and mess service (not to exceed $200,000) without regard to section 3709 of the Revised Statutes, as amended; * * *"
>
> "Public Law 573 - 80th Congress * * * (a) furnishing food and shelter, without repayment therefor, to employees of the Government assigned to Arctic stations; * * *"

4. Particularly in point is 20 CG 601 which involved a question raised by the Navy Department whereby it wished to make available the appropriation for "General Expenses, Marine

Corps", for expenditure for supplying necessary maid, cook, and personal services other than janitor services for the New Navy Nurses Quarters, Marine Barracks, Quantico, Va. In a letter to the Comptroller General, the Navy Department wrote:

> " * * * The Appropriation "General Expenses, Marine Corps, for the current fiscal year, as contained in the Naval Appropriation Act, approved June 11, 1940, (Pub. No. 588), is in terms available "For * * * personal and other services, and for other incidental expenses for the Marine Corps not otherwise provided for."
>
> "The old Navy nurses' quarters at the Marine Barracks, Quantico, Va., were small, consisting approximately of six rooms, whereas the new Navy Nurses Quarters at that place include a large living room, dining room, kitchen, basement, first and second floor corridors, and fourteen nurses' rooms. The nurses occupying the old nurses' quarters were furnished janitor services, but maid, cook, and personal services other than janitor were furnished by the nurses themselves. * * * "

5. Revised Statute, Section 1765, [redacted], provides:

> "No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefore explicitly states that it is for such additional pay, extra allowance, or compensation."

6. In applying this statute, the Comptroller General stated:

> " * * * To provide at this time and without further authorization from the Congress, maid service, cooks, and other personal services (not otherwise described) in addition to the quarters would be in contravention of Section 1765, Revised Statutes. * * * "

7. Should the subject matter of this memoranda be raised informally, the above discussion would require that this office advise similarly.

8. This memorandum does not consider the Act of March 5, 1928, c. 126 S. 3, 45 Stat. 193, 5 U.S.C.A. Sect. 75 a., which provides that the head of an executive department may, in his judgment, on certain conditions, furnish civilians employed in the field service with quarters, heat, light, household equipment, subsistence, and laundry service, the reasonable value of such allowances to be determined and considered as part of the compensation in fixing the salary rate of such employees.

The Director 30 June 1948

General Counsel 25X1A8a

Statutory Leave for [redacted] Overseas Employees.

25X1A8a

1. Except where maintenance of cover requires special procedures, [redacted] has followed the policy of treating overseas employees on the same basis as other normal government employees outside of the foreign service. This treatment includes pay, allowances, leave and travel. Standardized Government travel regulations prohibit travel while on leave at government expense. Consequently, employees stationed overseas who want to take leave in the United States have to pay the expenses back here and out again for themselves and families. The undesirability of this situation has long been recognized by Congress in providing for statutory home leave for Foreign Service officers and staff after twenty-four months overseas; in fact, the Foreign Service Act of 1946 makes such leave mandatory.

25X1A8a 25X1C4a

2. [redacted] has applied the authority of the [redacted] designees in order to maintain cover, but [redacted] employees have been subject to Standardized Government Travel Regulations. The inequity and inadvisability is obvious. Consequently, a provision similar to the Foreign Service Act statutory leave section was included in the proposed CIA legislation. If passed, it would apply to all CIA employees. The Comptroller General agreed to the need for such authority (subject to a minor amendment with which we were in complete agreement) and both committees in Congress approved the provision without question. No objection was raised when the Senate passed the bill and we are not aware of any objection in the House. Technically, however, we have no legal basis for authorizing statutory leave. 25X1A8a

25X1A8a 25X1A8a

3. [redacted] now has several cases of [redacted] employees who have completed their 24 months tour and wish to come home with their families for leave. At personal expense, the cost is prohibitive. Employees could be brought home on temporary duty for reorientation and training with incidental leave, but family travel could not then be at government expense. The alternative is a permanent change of station either on reassignment or for termination, but the employees are wanted at and want to go to the same posts to which they are now assigned. Any other arrangements made in an attempt to conform with Standardized Government Travel Regulations would be mere subterfuges which would be apparent on the record.

4. Forwarded with this paper is a memorandum of a recent discussion with the General Counsel to the Comptroller General. As noted therein, he was specifically informed that certain authorities in the bill might have to be exercised despite the failure of its passage and would, if you determined it to be necessary, be exercised on unvouchered funds, since he would be forced to object if vouchered funds were used. We believe he understood the probable necessity for

such action, although specific problems were not discussed, and that although unable to give formal approval, he would be inclined to support us in case justification were ever to be required, at least in those cases where the necessity is adequately shown.

5. In view of the above, we feel that a finding by you that home leave at government expense for overseas employees is necessary for the conduct of confidential [redacted] operations would be justifiable, even without other clear legal basis for such expenditures. If you so find and wish to authorize home leave, we shall assist in drafting an amendment to the Special Funds Regulations, authorizing the [redacted] to order [redacted] employees permanently stationed overseas home on statutory leave in accordance with the provisions of Sec. 5A(2) of the proposed CIA bill, unless their cover requires different handling. 25X1A8a 25X1A8a 25X1A

LAWRENCE R. HOUSTON

Attachment

[redacted]

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RESTRICTED

File: Legal Decisions (Property Rel.)

Assistant Director for Operations

Assistant General Counsel

12 July 1948

25X1A7a Tax Exemption for [redacted] Property on [redacted] 25X1A6a

See July 1948 Report of Jones (Real Estate - Acquisition)

Reference is made to:

1. Memorandum from Office of Operations to Director of Central Intelligence, Attention of General Counsel, dated 13 May 1948, subject as above;
2. Memorandum from Assistant General Counsel to Assistant Director, OO, dated 20 May 1948, subject as above;
3. Memorandum from Assistant Director for Operations to Assistant General Counsel, dated 21 June 1948, subject as above; and
4. Memorandum from Deputy Assistant Director for Operations to Assistant General Counsel, dated 29 June 1948, subject as above.

1. The above subject has been discussed with Mr. King, Assistant Chief, Division of Foreign Buildings Operations in the Department of State.

2. As stated in reference memorandum No. 2 above, exemption from local taxes on foreign real estate as a general rule is extended only to property registered in the name of the Department of State. Therefore, in order to secure the tax exemption on [redacted], it would be necessary to transfer the title to our property, together with its control, to the Department of State. 25X1A6a

3. Decision should be reached by your office, subject to the approval of the Director, as to whether you wish to transfer the title and control of the [redacted] property to the Department of State, or wish to maintain it as presently held in the name of the United States of America, as represented by [redacted]. 25X1A6a 25X1A9a

4. If you determine that you wish to continue the title of the property as presently held, there is no objection to the payment of the tax by this Agency.

5. It is the opinion of Mr. King that if CIA does pay the property tax it should be paid either under protest or with the statement that it is still subject to negotiation. It should be pointed out that the property which is being taxed is held in the name of the United States; that if similar property was held by a foreign government in the District of Columbia it would be exempted from taxation.

RESTRICTED

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No. 78

6. It was the further opinion of Mr. King that if CIA decided not to transfer the property to the Department, the tax should be paid, especially in view of troubled conditions in the Middle East. However, he stressed the fact that the door should at all times be kept open by noting its payment under protest or subject to negotiation regarding refund or exemption.

Walter L. Pforzheimer

2c

Chief, Services Branch

13 July 1948

Assistant General Counsel

Proposed Transfer of Memovox Recording Machines to the Department of State

1. In regard to War Assets Administration letter to this Agency, dated 14 June 1948, the following comments are submitted for your information and guidance.

2. The War Assets Administration is the "disposal agency" for this type of materiel. Since we have the concurrence of that agency, a direct transfer to the Department of State is legally proper provided the materiel falls within the definitions of Section 14 (b) of the Surplus Property Act. This Section provides that, subject to specific restriction by War Assets (which apparently does not exist here), "any owning agency may dispose of -

a. any property which is damaged or worn beyond economical repair;

b. any waste, salvage, scrap, or other similar items;

c. any product of industrial, research, agricultural or livestock operations, or of any public works construction or maintenance project carried on by such agency;

which does not consist of strategic minerals and metals, as defined in Section 22."

3. It seems, therefore, that this Agency should make an administrative determination of whether or not the machines fall within the scope of Section 14 (b) - and particularly subsections (b)(1) and (b)(2). Your conclusion in this respect will be proper from a legal standpoint. The restriction regarding strategic minerals and metals does not appear to be applicable.

25X1A9a
[redacted]

25X1A9a
General Counsel: [redacted]:mes
Encl: 1
Memo dtd 14 June 1948 from War Assets, addressed to attention
25X1A9a of [redacted] Same subject as above.

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Legal Decisions
Property

No. 80

(Liability)

16 July 1948

MEMORANDUM TO THE FILES

SUBJECT: Reimbursement By the Government From Its Negligent Employees.

Case No. 00038 involved an accident which was occasioned by the negligent act of a Government employee, and resulted in damages to a Government-owned vehicle, as well as a privately owned vehicle.

The facts of record appear to establish a prima facie case of recklessness or gross negligence on the part of the employee, for which reason the CIA Property Survey Board has conditionally recommended that the individual be held pecuniarily liable in the sum of $98.90 for damages to the Government-owned vehicle, as well as the cost of repairs for the privately-owned vehicle.

The Survey Board has made a conditional recommendation for the following reasons:

a. The language of present administrative regulations authorizes the imposition of pecuniary liability solely on the basis of damage to public property;

b. The evidence submitted by the investigating officer may possibly be supplemented; and

c. The language of a memorandum dated 28 October 1947 from the General Counsel to the Chief of Finance on the general subject here concerned, appears to have suggested a difference of interpretation by the Members of the Survey Board.

The scope of this memorandum is restricted to a continuation of the final paragraph of said memorandum, in order to resolve any questions of interpretation which may have arisen.

An almost identical case caused the Secretary of Agriculture to write to the Attorney General, requesting a clarification of his authority to proceed against negligent Government employees who had caused damage to privately owned vehicles. In 40 Attorney General 9 dated 25 March

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1941, the Attorney General stated that it was the intention of Congress that the Government should assume the burden under the Negligence Act of 28 December 1922, 31 U.S.C.A. 215, and that it was not its intent that the burden should be shifted to the employee.

The Attorney General continued with a review of this general subject and enunciated certain principles which are for consideration in future cases of the type here involved.

As a general rule, it may be stated that in the absence of statutory authority, express or implied, an officer or employee of the Government may not be administratively deprived of his compensation. (38 Court of Claims 341, 246 U.S.388, 8 Fed. 2nd, 669, 34 Attorney General 271.) The aforesaid authorities also stand for the principle that if such a collection were attempted to be enforced, the employee would undoubtedly be entitled to his day in court, as in other claims asserted by the United States Government against its citizens.

The only basis of collection suggested by the Attorney General is one involving the acquiescence of the employee.

The Attorney General, in reviewing the legislative history of the Negligence Act, referred to the case of Dennis v. the United States, 2 Court of Claims 210, which involved a negligent act causing liability on the part of numerous Government employees. Upon being held responsible for their act, which was performed within the scope of their employment, general statutes of relief were passed by Congress on the principle that the burden should be assumed by the Government.

278 U.S. 41, and other cases not referred to in this memorandum, reflect that the Congress has, by general legislation, progressively assumed liability to persons sustaining injury through the negligence of its officers or employees and has not made provision for the assertion of claims by the Government against its negligent employees. The Attorney General, in the cited case, concluded that in the absence of statutory authority, there was no power to enforce a collection against a negligent employee and suggested that the administrative remedies in the form of disciplinary action, including suspension and dismissal, were probably sufficient.

25X1A9a [redacted]

~~CONFIDENTIAL~~

Executive for A & M.

5 August 1948.

Assistant General Counsel.

2 X1A5a1 [redacted] Contract XO-104.

1. Reference is made to the memorandum dated 29 July 1948 25X1A9a from [redacted] regarding the delegation to other Government agencies of the function of auditing contractor's records in connection with CIA contracts, and the accom- 25X1A9a panying referral from [redacted] to the Executive for A & M dated 29 July 1948. The basic memorandum requests, in Paragraph 4(c), advice on the question as to whether the GAO will "afford relief to CIA in the settlement of a contract on which the audit functions have been performed by another agency not under the jurisdiction of CIA."

2. The question as to whether the GAO will "afford relief to CIA" in this connection cannot be answered in this form, as no prediction can be made as to GAO's reaction to the settlement of a specific contract before questions on that contract have been raised.

3. It is believed that the intent of the question raised by Paragraph 4(c) is whether the GAO will accept an audit of a CIA contract by an Agency other than CIA. The question seeks to ascertain whether there are any legal objections to such delegation of this auditing function.

4. This Office sees no legal objection to such delegation. This appears to be a recognized practice in the Government. It is the opinion of Mr. Bell, Chief of the Audit Division of the GAO, that no objection would be raised by the GAO to this practice. This assumes, however, that the auditing will be done by another Government agency and not by an outside contractor. It appears to be the practice, particularly among components of the military establishment, that whichever department of the Government has the greatest amount of contractual business in a given city or area will handle the audits for other departments in the same area.

5. This opinion is addressed to the legal question raised by Paragraph 4(c) and does not in any way consider the problems raised 25X1A9a in Paragraphs 3(a)-(c) of [redacted] memorandum, which are outside the jurisdiction of this Office.

Walter L. Pforzheimer
Assistant General Counsel

~~CONFIDENTIAL~~

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

Memos of Legal Opinions Tort Claims

TO : Files

DATE: 6 August 1948

FROM : Office of the General Counsel

SUBJECT: Tort Claims in Favor of the Government

1. Tort claims against the Government are regulated by the Federal Tort Claims Act. There is no specific provision, however, in the statutes or appropriate opinions of the Comptroller General in regard to collection of tort claims in favor of the Government by agencies other than GAO or Justice.

2. The problem of handling tort claims that seems to be clearly in favor of the Government was discussed today with Mr. McKinley of the Comptroller General's office. There have occasionally been -- and will certainly continue to be -- small claims in favor of the Government resulting from automotive accidents. When the case is apparently in our favor, and the damages are liquidated, Mr. McKinley saw no objection to our processing the claim and attempting to secure a recovery of the cost. No arbitrary monetary ceiling was established, but the advisability of action by this Agency alone will be left to our discretion. If the case presents any question on the actual amount of damages involved, or if a negotiated settlement appears implausible, the case will be forwarded to the General Accounting Office for collection and possible negotiation by Justice.

25X1A9a [redacted]

CWP:mes:mbt

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No. 84

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Approved For Release 2001/08/28 : CIA-RDP67-01057A000100020001-8

Legal Int Claims (overseas claims)

17 August 1948

TO: Chief of Station, [redacted] 25X1A6a
Attention: [redacted] 25X1A9a

SUBJECT: Auto Accident Claims

REFERENCES: [redacted] 25X1A6c

1. A decision was requested in [redacted] 25X1A6c in regard to accident claims of the type attached to [redacted] 25X1A6c These claims arise from the negligence of overseas employees driving vehicles belonging to, or rented by, this Agency.

2. Regulations provide that Headquarters is authorized to adjust, determine, make final settlement, and authorize payment of claims arising from the negligence of field employees outside the continental U. S. Settlement and payment may be made directly by this organization, or [redacted] 25X1A12a 25X1A12a through the appropriate agency involved. Such an agency may either be reimbursed or paid in advance. However, investigation and processing of the claim should be made by the appropriate agency, and the final liquidated amount of settlement should then be submitted to ADSO for approval.

10.7

3. It is our understanding that the [redacted] claim is now settled. 25X1A9a For claims of this nature arising between 20 December 1946 and the time when our vehicles were insured, the preferable agency of payment is probably [redacted] 25X1A12a 25X1A12a but that is a matter of expedience and security for your discretion.

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[redacted]

No. 87

X1A7b

Next 1 Page(s) In Document Exempt

CONFIDENTIAL

Acting Chief, [redacted] 25X1A7a

20 August 1948

General Counsel

[redacted] Mediterranean Recruitment Project 25X1A7a

1. Returned herewith is the original memorandum to the Chairman, Projects Review Committee dated 6 August 1948 from the Deputy Assistant Director for Operations with the attachments.

2. The employment agreement set forth in Tab A was originally concurred in by this Office, subject to such changes in form as might be required by [redacted] 25X1A6a law. Various laws pertaining to employment have been received by this office and have been reviewed to ascertain what effect, if any, they will have on [redacted] 25X1A7a recruitment. It appears that no changes will be required by the laws so received in the form of the agreement set forth in Tab A. It is, therefore, approved as to legal form and, if otherwise satisfactory, may be put into effect immediately.

3. Certain provisions of the [redacted] 25X1A6a laws have raised minor points concerning such matters as workmen's compensation and employer-employee relationships. We do not believe these are of immediate importance, and we are preparing a short memorandum calling attention to questions that might arise in the future.

4. We feel that the laws applying to employment of women at night and suspension of work during certain hours of the day in summer should not be applicable to the [redacted] office. However, we understand that 25X1A7a 25X1A6a that office has already asked for a ruling on this point from the [redacted] authorities, and if technically these laws apply, we feel that it would not be difficult for the office to get an exception from the local government.

LAWRENCE R. HOUSTON

CONFIDENTIAL

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Traveling Expenses (Personal Convenience)

CSFD

25 August 1948

Office of the General Counsel

Travel Expense for [redacted] 25X1A9a

1. This office's opinion has been requested in regard to the propriety of reimbursing an employee for his dependent's travel in the following situation:

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a. [redacted] was assigned to this organization in [redacted] in a military status from February, 1946, until June, 1947. At the latter date, he was mustered out of the Army in [redacted] and entered on our rolls in a civilian capacity. In computing time with this organization, the employee's army service was included. Employee was thus eligible for transfer or return to the United States in August, 1947. In December, 1947, he married [redacted], who was then an alien. Continuance of the employee's work was approved, and, in fact, specifically desired for a new tour of duty. Employee agreed in writing to remain at his job in [redacted] for eighteen months after his wife joined him there. And, for the convenience of the Government, he agreed to undertake the extended tour without first returning to the United States. His wife had been denied admission to [redacted], however, because of her alien status, and she came to the United States in the spring of this year to obtain American citizenship. She took her oath on 1 June 1948 and then joined her husband in [redacted]. Her transportation to [redacted] was paid by this agency, and the question of whether such payment is authorized under present regulations has now been raised.

2. Section 6.1 (a) of Part VI of Special Funds Regulations provides that travel payment to employees from Special Funds will conform to the requirements of P.L. 600, 79th Congress, 2nd Session, approved 2 August 1946, the regulations issued thereunder, Standardized Government Travel Regulations, and Bureau of the Budget Circular A-7. P.L. 600 provides that, in certain circumstances, dependent's transportation will be paid by the Government when the employee is a new appointee or when the employee is transferred from one station to another in the interest of the Government.

3. It is clear that transportation for an employee's dependents from the United States to his first post, from one post to another outside the United States, and for return to the United States, can be paid by the Government under the authority of P.L. 600 and E.O. 9778. Such travel cannot be for the convenience of the individual, however, and must be a natural concomitant to transfer of the employee on other than temporary duty. The right of the dependent to travel at the Government's expense depends on the

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transfer of the employee on other than temporary duty. The right of the dependent to travel at the Government's expense depends on the transfer of the employee, and the wife's right to travel is not independent of the husband's. (C.G. 5-175). Such independent travel would be permissible only where Congress has specifically provided for it (C.G. 24-741), and there is no indication of such sanction here. The dependent's travel does not have to be simultaneous, of course, and can precede or follow that of an employee (C.G. 18-971) - always provided, of course, that there is travel by the employee.

4. When the employee is married while on duty overseas, he is entitled to reimbursement for his wife's transportation to the United States on his change of station to the United States. (C.G. 24-887).

25X1A9a 5. It has been suggested that the agreement to extend Mr. [redacted] employment should be treated as a new appointment. In C.G. 5-175(177), the Comptroller General stated that:

> "Reimbursement for transportation of a wife as for travel to an initial post of duty can only be allowed when it is the officer's initial post of duty on an original appointment, or an assignment to a post after a change in class or grade such as would constitute a new appointment....."

A change in salary or grade may not necessarily be controlling, however. (C.G. 10-874).

6. There is no precedent for payment in the situation presented in this case. Since the employee never left his station, it cannot be designated a "transfer". Without travel by the employee, there is no independent right to reimbursement for his dependent's travel unless it can be considered a "new appointment", and such an interpretation of the extension in employment cannot be accepted in view of the facts. If the facts stated above are correct, the payment of [redacted] travel to [redacted] 25X1A6a 25X1A9a from this country were purely personal, and, unfortunately, amounted to a mere gratuity which was illegal regardless of what funds were used. Unless additional facts are produced which change the present picture, it is our opinion that there is no authority for payment of travel expenses under those circumstances. The file is accordingly returned to the certifying officer for appropriate action.

25X1A9a
[redacted]

25X1A9a
General Counsel [redacted]

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~~CONFIDENTIAL~~

Contracts
(Overseas Agreements)

CPD - Attention: 25X1A9a [redacted] 26 August 1948

Assistant General Counsel

25X1A9a [redacted]

1. ADSO, this date, requested me to furnish you with a memorandum concerning the above subject. It appears that subject arrived at his present station of [redacted] on 14 July 1947. At that time, he had signed the usual twenty-four months agreement. Subsequently, he was transferred on a permanent change of station from [redacted] He left [redacted] on 4 August 1948 and arrived in Washington on 5 August 1948 for temporary duty in accordance with orders. He intends to leave Washington, D.C., on 26 August 1948 to report directly to [redacted]

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2. ADSO advised that it is his wish, if consistent with regulations, that subject continue under the terms of his original twenty-four months agreement. This office sees no legal objection to such procedure. This would mean that subject has the legal right to be returned to the United States for reassignment or termination after 14 July 1949. It was understood between ADSO and subject that he would remain at his new permanent station for a two-year period. However, this understanding does not supersede the terms of the original written twenty-four months agreement.

3. Subject was informed that in so far as home leave is concerned, the matter was open to question as to whether he would be entitled to such leave after 14 July 1949 or two years from the date of his arrival at [redacted] There is a question of interpretation of existing regulations which will be determined at a later date as the occasion arises.

25X1A6a

25X1A9a [redacted]

25X1A9a
General Counsel: [redacted]mes

cc - ADSO
SFD

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~~CONFIDENTIAL~~

No. 93

Legal Dft
Legislative Counsel

Executive for A&M

General Counsel

2 September 1948

Parking Facilities

1. Lack of parking space for employees in "M" and "Q" Buildings has raised the question whether additional space might not be obtained by paving certain areas near those buildings. One of the spaces is between "M" and "Q" and the other is between "Q" and Constitution. [redacted] 25X1A9a has been investigating the situation, and as the result of his questions, he has received the attached letter from PBA. He then requested a ruling as to whether the suggestions in this letter could be carried out if they were felt to be desirable.

2. We have discussed the situation with Budget and Finance Branch and feel that the proposal cannot be carried out at this time. We do not have appropriation language justifying expenditures for improvements of this type on property not under our control, even though it is Government property. While the improvement would be for our immediate advantage, it would still be in essence an improvement on land belonging to another agency and, therefore, an expense not chargeable to our appropriation. Since it is not an unforseen situation of an emergency nature, it would not be an appropriate charge to contingency funds under the Director's control.

3. If the improvements are felt to be highly desirable, the proper method would be to include them as specific items in the 1950 budget. The question whether we should ask for such an appropriation or whether we should support a request by the other agencies involved will have to be considered if performance of the work is desired.

LAWRENCE R. HOUSTON

Encl:
Letr. to [redacted] Jr., dtd. 4 Aug. 1948 25X1A9a

LRH:mbt

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No 94

Contracts (Terminations)

RESTRICTED

Executive for A&I

3 September 1948

General Counsel

25X1A7b

25X1A6a Guard Service, [redacted] 25X1A7a

1. In considering this case, we make one assumption which is not clearly shown in the record. In the document which we shall call the [redacted] contract, which is the 25X1A7a
temporary appointment of 29 December 1946, the provision for salary states that the [redacted] per month would be in 25X1A6a
accordance with an additional written agreement. We assume that this additional agreement was either a copy of what we shall call the Military Attache's contract of 1 July 1946 or a substantially similar document. In either case, we think the situation is essentially simple.

2. At the time these guards were taken on by the Military Attache, they all became monthly employees, at least within the concept of the [redacted] law. The Mili- 25X1A6a
tary Attache's contract specified that the Chaffirs constituted the Party of the Second Part. A copy of the contract indicates that all three signed and affixed their fingerprints. Therefore, although [redacted] was named 25X1A9a
as Representative and Payee, there was privity of contract between each one and the Government.

3. We do not believe that the issuance of the temporary appointment by [redacted] on 29 December altered the 25X1A7a
essential relationship, particularly if, as we assume, it incorporated the original payment agreement by reference. Consequently, we agree with the Chief, Budget and Finance that on termination they will be entitled to indemnity from 1 July 1946 to the date of separation, including the thirty days' notice period. We also concur that on termination each guard should be required to sign a release upon payment.

4. It is our further opinion that each guard was entitled during this full period to fifteen days' leave per year in accordance with [redacted] law and that this 25X1A6a
leave could have been administratively increased in accordance with local custom. Since there is no requirement in the law that this leave be carried over and accrued in successive years, again local custom should be followed.

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5. Since we feel that the [redacted] contract did not change the essential situation, we do not believe that it will be necessary to give thirty days' notice of its cancellation, as suggested by the Chief, Budget and Finance Branch. As the transfer from the HA to [redacted] may technically be considered a cancellation of the HA's contract, we feel that the simplest solution is to re-execute an agreement identical to the HA's contract, obtaining the signatures of all three guards and inform the guards that this new contract superseded the appointment of 29 December and would be considered a continuation of their employment under the original terms agreed upon between the Government and the guards as set forth in the HA's contract. As stated by the Chief, Budget and Finance, [redacted] would be paid on a Standard Form 1034. Since there is continuous service involved, we agree with the Chief, Budget and Finance Branch that there would be no payment for leave or indemnity to be made at the time of execution of the new agreement.

25X1A7a

25X1A7a

25X1A9a

6. In view of the above, we suggest the following message in place of that proposed by the Chief, Budget and Finance:

25X1A9a "Re [redacted] 20 July letter on guard contract. Execute new agreement identical to agreement of 1 July 1946 as superseding the appointment of 29 December 1946. After execution, make payments on 1034. Letter follows."

LAWRENCE R. HOUSTON

Enclosures

LRHambt

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Allowances - in kind

Executive for Adm 8 September 1948

General Counsel

Proposed Mess Facilities for 25X1A7b [redacted]

1. I have indicated my nonconcurrence to the recommendations of the Chief, Services Branch on the above subject, on page 4 of his memorandum of 30 July 1948. The reasons for this nonconcurrence are set forth below in considerable detail, as apparently there have been misunderstandings and confusion in connection with this problem.

2. We believe that the basic confusion was created by the wording of the Act cited by the Chief, Services as authority for his proposal (5 U.S.C.A. 75a, Section 3 of the Act of 5 March 1928, 45 Stat. 193). For clarity, these provisions are set forth in full here again:

> "The head of an executive department or independent establishment, where, in his judgment, conditions of employment require it, may continue to furnish civilians employed in the field service with quarters, heat, light, household equipment, subsistence, and laundry service; and appropriations for the fiscal year 1929 and thereafter of the character heretofore used for such purposes are hereby made available therefor: Provided, That the reasonable value of such allowances shall be determined and considered as part of the compensation in fixing the salary rate of such civilians."

3. In view of the fact that the purposes for which this law was enacted do not appear clearly from its text, we have gone into the legislative history. Prior to 1928, many of the departments of the Government were furnishing to certain parts of their field services quarters, subsistence, and other benefits, such as medical attendance and special facilities. These were in effect payments in kind to the field employees. Apparently, Congress felt that this was an unfair differentiation between field and departmental employees, as it conferred an actual material gain to the field employees which could be measured in terms of money. The theory was therefore evolved that the measurable advantage should be considered as part of the salaries of field employees so as to reduce the

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amount paid in cash. These salaries were, however, established by law and could not be altered by administrative action within the departments. Consequently, annual appropriations were made for the several field installations concerned for the payment of salaries and expenses, and these annual appropriations contained specific authority to adjust the salaries involved, taking into consideration the value of the payments in kind. By 1928, this had apparently become a routine annual enactment, and it appears that Congress decided to make it permanent legislation.

4. We can only conclude, therefore, that the Act of 5 March 1928 (5 U.S.C.A. 75a) was intended to give permanent authority to heads of departments to adjust field salaries where payments in kind were involved and does not, in itself, authorize expenditures for maintenance of Government quarters, mess services, etc. This conclusion is bolstered by the fact that payments for the facilities or subsistence were made out of specific appropriations or working funds established by law for that purpose and not under the authority of the Act of 5 March 1928. As stated by the Comptroller General (8 C.G. 628 at page 630):

> "The portion of the compensation paid in cash is charged to the salary appropriation, and the determined value of the allowances, including any items of upkeep, maintenance, etc., is chargeable to appropriations expressly provided for that purpose."

Also quoted in that opinion is language from another decision, A-19824 of 15 September 1927:

> "With respect to employees who are paid compensation partly by receiving allowances in kind, only the cash part of the compensation is chargeable to the salary appropriation, the net value of the allowances furnished in kind having already been charged to the proper appropriation available for producing same, in this case 'Medical and hospital service.' This is the correct procedure regardless of whether the appointment or contract of employment does or does not specifically provide that the allowances are to be furnished in kind."

5. We have at no time requested or received any appropriated funds for the purpose of running a mess or paying mess attendants, and 5 U.S.C.A. 75a restricts

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itself to situations where there are funds appropriated for such specific purposes. Hence, the amount by which an employee's salary is reduced is an incidental issue which will arise only if we are concerned in the future with the operation of quarters or subsistence from funds given us for that purpose. In our opinion, therefore, there is at present no authority for CIA to make expenditures for the type of activity proposed for the [redacted] 25X1A7b

[redacted]

25X1A7b

LAWRENCE R. HOUSTON

LRH:mbt

Legal Dec (Tort Claims) Claims (3)

Executive for A&M

20 September 1948

General Counsel

25X1A7b

Claim for Damage Submitted by Mr. [redacted]

1. The enclosed file has been reviewed by this office and is returned to you with our comments on the legal aspects of the action suggested.

25X1A7b

2. [redacted] native employee of the [redacted] drove a United States [redacted] owned building in [redacted] 25X1A7b on 1 September 1947. Apparently, there were no witnesses to the accident. The driver stated in an interrogatory that he was carrying certain United States records in his vehicle when a horse-drawn cart caused him to swerve into the building. The police apparently considered him negligent, however, and charged him with reckless driving. The final police action is not indicated.

3. Neither the driver nor our clerk in charge of transportation reported the accident, and on at least one occasion, the clerk diverted an attempt by the building owner to submit his claim. When the accident was finally brought to our attention in February, 1948, both the driver and the clerk were suspended and later discharged. In the meantime, the driver had been attempting to settle the damages directly with the building owner in order to preserve his employment with our station. 25X1A7b

25X1A6a 4. The owner of the building, Mr. [redacted], then submitted a claim against the United States Government for [redacted] for damage to his property. A member of the U. S. Foreign Claims Commission estimated the damages to be [redacted] or less. 25X1A6a 25X1A7b

5. The Chief of the [redacted] has recommended that the claim be approved for settlement in the maximum amount of [redacted] subject to negotiation and a possible reduction to LE 20. This recommendation was then forwarded to you by the Chief, Budget and Finance Branch, with the suggestion that the Director's approval be obtained in order to remove any possible doubts of validity. 25X1A6a

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6. The laws applicable to the settlement of Tort Claims against the Government do not cover this situation. The Federal Tort Claims Act of 1946 is limited to claims arising within the United States and specifically excludes claims arising outside. Congress has jealously guarded the right to pay foreign claims and has granted this power only to certain specified agencies for strictly limited purposes. No such power has been extended to this Agency. We have discussed the matter with legal officers for the Department of State who are experienced in this field, and they concur that the normal procedure where favorable action on such a claim is desired is to forward it to the General Accounting Office, with a recommendation that it be considered a meritorious claim for submission to Congress for special relief. If such action is desired, we feel our recommendation should be limited to the figure of LE 20, according to the estimate of the Foreign Claims Representative.

7. In view of the above, it is our opinion that there is no authority for the Director to approve payment of this claim unless there are special aspects of a confidential nature or which go to the actual basis of operations. On the record, there do not appear to be such special considerations, as the claim is one which was handled openly with the full knowledge of the police and other officials.

LAWRENCE R. HOUSTON

Encls.

LRH:CWP:mes/mbt

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Files 21 September 1948

[redacted] 25X1A9a

Insurance on Risks to Government

1. In the absence of specific statutory authority, it is well-established that the Government acts as a self-insurer, and that funds for the support of Government activities are not considered applicable generally for the purchase of insurance to cover loss to the Government. (23 Comp. Gen. 269; id 297 - 4 Comp. Gen. 690, etc.) As the reason for this policy is stated in 19 Comp. Gen. 211, 214 -

> "The magnitude of its resources obviously makes it more advantageous for the Government to carry its own risks than to shift them to private insurers at rates sufficient to cover all losses, to pay their operating expenses, including agency or brokers' commissions, and to leave such insurers a profit."

The practice of self-insuring by the Government, however, is one of policy and not of positive law, and it is not strictly observed in cases involving property of a Government corporation -- an intervening legal entity (21 Comp. Gen. 928). Nor has it been applied in cases where private property was in the custody of the Government through judicial process, loan, or lease. (8 Comp. Gen. 19; 17 id. 55; B-43932, 9-15-44.) In cases where the application of the policy may be questioned, the doubt can always be resolved if the statutory provision is sufficient to justify the purchase of insurance from a source outside the Government. (3 Comp. Gen. 786; 16 id. 453; 19 id. 211.) It should be noted that the policy relates to the risk and not to the nature of the risk, and that there is no material distinction between assumption of risk of property damage and assumption of risk of tort liability (19 Comp. Gen. 798). Requirements of necessity or expedience may intervene, of course, and there the application of the rule is obviated. This would be so where a local statute makes public liability insurance on motor vehicles compulsory.

25X1A9a
[redacted]

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General Counsel: [redacted]mes

Legal Decisions
Insurance

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Legal Decisions (Travel & TR.)

Executive for A&M

General Counsel

6 October 1948

EIB Travel

Traveling Expenses (Vehicles)

1. In establishing the EIB program, I&S submitted a request for approval by the PRC of a budget to cover the operating expenses for the fiscal year 1949. They requested that all field travel be paid from unvouchered funds for reasons of security and estimated the amount necessary to cover such travel at $30,000 of unvouchered funds for the fiscal year 1949, based on an estimate of $50.00 per case. This item of unvouchered travel was discussed by the Committee in some detail, and the subject of the automobiles to be used was particularly stressed.

2. Some accountings have been submitted which include expenditures for the purchase of gasoline and for the cost of emergency repairs. The question has arisen whether these items are properly chargeable to the travel allocation or should be paid out of the contingency funds provided for EIB.

3. A review of Project CO-33, which establishes both the travel and the contingency funds, indicates that it did not consider specifically providing for such expenditures as those mentioned above, but it is apparent that the approval of funds for travel was intended both by I&S and the Committee to cover all expenses incident to travel, even though emergency repairs and fuel were not specifically mentioned. It is our opinion, therefore, that all such expenditures made heretofore are properly chargeable to the allocation of $30,000 of unvouchered funds if they are necessary and proper in amount and incidental to the travel performed.

4. Since the security ruling based on concealment of the governmental connection has prevented the use of tax exemption certificates, the charges for gasoline and oil and other incidental expenses relative to field travel of the motor vehicles would be properly chargeable to the travel allocation.

5. Raising the question, however, has brought up further discussion of the procedures to be followed, and there appears to be agreement on the following. In many major cities, the Bureau of Federal Supply has contracts for maintenance, repair, and servicing of all federal cars in the area. CIA cars should be taken care of under such contracts and the Bureau reimbursed by us. This would take care of servicing and repairs at most of the headquarters and,

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on travel, for major repairs. The reimbursement involved would, of course, be a vouchered transaction as part of the administrative costs of the station. Furthermore, it has been determined that credit cards would not violate the security aspect, and, consequently, all purchases of gas and oil and minor emergency repairs can be made through credit cards, which will be issued to all drivers. This, again, will be paid on a vouchered basis, but it is believed that, purely from a budget point of view, it would be proper to charge these expenses against the $30,000 travel allocation, inasmuch as the Committee contemplated such expenses in approving that item. Incidentally, it is understood that all cars will be registered with Government plates, and there will be no charges for state registration or insurance.

6. It is felt that, in rare instances, there may be fuel procurement or emergency repair costs arising in circumstances where for security reasons the Government connection should not be made known. If it is determined, therefore, that credit cards should not be used, the agent concerned should pay the bill and submit a request for reimbursement out of unvouchered funds on his travel voucher, with full explanation. It should be made clear, however, to all agents that the burden of proof will be on them to establish necessity for such security measures. Where such unvouchered expenditures arise, the original approval of the PRC appears to be sufficient to permit charging these items to the $30,000 unvouchered travel allocation.

7. In view of the new arrangements for procurement of fuel and services by Government credit cards, perhaps consideration should be given to the payment of other travel expenses involved, including per diems from vouchered rather than unvouchered funds. This would limit the authorizations for use of unvouchered funds in Administration and Management Operating Procedure No. 2 of 1 July to the rare repair and procurement situation involving unusual security aspects outlined in paragraph 6 above, communication charges through other than headquarters facilities, and the miscellaneous emergency purchases where no Bureau of Federal Supply service is available.

LAWRENCE R. HOUSTON

LRHsmbt/blc

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Chief, Services Branch. 5 October 1948.

Office of General Counsel.

Transfer of Property between Government Agencies.

1. Your memorandum of 9 September 1948 requests that a decision be rendered as to the authority for the transfer of property from the Federal Communications Commission to the Central Intelligence Agency without an exchange of funds.

2. Although the decisions generally referred to by you are concerned more with the transfer of surplus used property from one recognized Government department to another than with property reconciliations resulting from executive and administrative reorganizations, a resume of the decisions may be considered helpful.

3. With regard to your specific question, you are advised that there is no legal objection to the mere transfer from one bureau or department of the Government to another department of property no longer required for the purposes for which it was appropriated. Such a transfer is not considered to be a sale and is not open to the objection that public property cannot be disposed of without the authority of Congress. (35 O.A.G. 245). This opinion was confined to a consideration of the authority for transfer and questions of reimbursement between appropriations were not discussed.

4. A subsequent decision affords more light on the question of adjustment between appropriations arising from the transfer of supplies or equipment no longer needed by the transferor department. That such a transaction is not a sale was recognized, conversely, by the Comptroller of the Treasury, (25 Comp. Dec. 961), when he held that where equipment is transferred from one Government department to another, payment to the transferor department is not authorized since the transaction is not a sale. Continuing, the Comptroller added that no adjustment of appropriations is required where the expenditures, from the appropriations which have the original expense, have accomplished the purposes for which it was made. A mere transfer without additional expense involves a mere question of accountability and not an adjustment of appropriations, e.g., the transfer of a revenue cutter, no longer suitable as such, to another department for use as a supply vessel in the servicing of coastal lighthouses and lightships.

5. However, in 17 O.A.G. 480, the Attorney General pointed out that a transfer of property for administrative expediency, although not a sale, may involve not only a transfer of property, custody and accountability, but a transfer of cost from one appropriation to another.

6. With respect to property transfers involving reimbursement, it can be stated that the transfer of public property from one bureau or department to another, and the reimbursement of the appropriation from which originally purchased by a transfer of moneys from the appropriation for the object for which the property is to be used, has been recognized by long practice and is often economical and advantageous. Such a transfer is not a sale within the meaning of Section 3618 of the Revised Statutes, and it is not required that the moneys received therefor shall be covered into the Treasury as miscellaneous receipts. But reimbursement is made, and the moneys so received are repaid to the appropriations from which the property was originally purchased, in order that such transfers may not be in contravention of Section 3678 of the Revised Statutes, which provides that all funds appropriated for the various branches of the public service shall be applied solely to the objects for which they were respectively made. (12 Comp. Dec. 668; 14 Comp. Dec. 641; and 21 Comp. Dec. 819 support the foregoing.)

7. The firmness of the above principles is demonstrated by an interpretation of the Act of July 11, 1915, 41 Stat. 132, by the Comptroller of the Treasury. The Act provides:

> "The interchange without compensation therefor, of military stores, supplies, and equipment of every character, including real estate owned by the Government, is hereby authorized between the Army and the Navy upon the request of the head of one service and with the approval of the head of the other service."

The Comptroller held that the Act did not contemplate a department transferring its property to another department where that action would put the transferor department to the expense of procuring other property to replace that transferred.

8. As previously stated, the reasoning of the Attorney General and other authorities has been based on voluntary transfers of property between Government departments and not on transfers of property accompanied

by a transfer of functions, personnel, records, etc., caused by executive or administrative reorganizations, consolidations, or eliminations.

9. You will recall that Executive Order 9621, dated 20 September 1945, terminated the Office of Strategic Services and certain of the functions, personnel, records, etc., were transferred to the Secretary of War, where a Strategic Services Unit was created. By Presidential Directive, dated 22 January 1946, the President directed the respective heads of State, War and Navy to assist in the establishment of a Central Intelligence Group under a Director of Central Intelligence, responsible to the National Intelligence Authority. Pursuant thereto, the Acting Secretary of War, by memorandum dated 3 April 1946, directed the Director of the Strategic Services Unit to make available any facilities and services of the Strategic Services Unit which might be useful in the performance of an authorized function of the Central Intelligence Group. Thereafter, and in accordance with Paragraph 5 of N.I.A. Directive No. 5, dated 8 July 1946, property, supplies, and equipment were transferred by the Strategic Services Unit, War Department, to the Central Intelligence Group. The nature of the consolidations, under the circumstances then existing, compels a conclusion that all transfers were intended to be accomplished without reimbursement or adjustments between appropriations.

10. This Office does not consider that the acquisition of property from OSS to SSU to CIA involve an application of the ordinary rules covering the transfer of property between Government departments.

11. It is the understanding of this Office that a reconciliation of the FCC inventory and CIA inventory has not been achieved due to variances in nomenclature, quantities, and the absence of satisfactory records from CIA predecessors. Although it is not clear how an inventory taken by CIG on or about 1 November 1946 will reflect the FCC inventory as of the time of transfer to G-2 of the War Department, due to intervening withdrawals and replenishment of stocks by [redacted] this Office perceives no legal objection to the proposed arrangement on the assumption that a satisfactory reconciliation, or other appropriate administrative measures, can be effected on a basis consistent with the expressions contained herein. 25X1A7b

LAWRENCE R. HOUSTON
General Counsel

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(Damages)

Contracts Damages

Chief, Services Branch. 7 October 1948.

Office of the General Counsel.

Parking Space for OO/C [redacted] Office. 25X1A6a

1. This will acknowledge your memorandum dated 23 September 1948 in regard to renting parking space 25X1A6a in [redacted] for the Contact Branch of C.I.A. P.B.A. Enclosure 65969 forwarded by your memorandum quoted pertinent provisions of the Rules and Regulations governing leases in the [redacted], where the 25X1A6a space is desired. The sections singled out for particular comment provide that:

"2. The management will endeavor to protect the property of patrons, but will not be responsible for loss or damage to cars or their contents from any cause whatsoever. A check room is provided without charge. Lessee's cars are not covered by our insurance.

"4. All cars driven, called for, or delivered at the owner's request are handled at owner's risk, and any person so driving shall be the exclusive servant of the owner and it is understood that for insurance protection they must be covered by owner's insurance policies and cars are operated under owner's responsibility and at owner's own risk.

"5. The owner hereby agrees to indemnify and save the management harmless from any and all liability for injury or death of persons and damage to property arising by the operation of the car within the confines of the garage by the owner of such car or his agent."

2. These sections have been carefully reviewed by this Office, and it is our opinion that they are illegal and void as against the Government. In a similar situation in which the Government agreed to indemnify the Southern Pacific Company in an equally broad and indefinite scope, the Comptroller General (16 C.G. 803) stated that such an agreement came within the prohibition of S. 3732, Revised Statutes, which provides:

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"No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year. R.S. § 3732; June 12, 1906, c. 3078, 34 Stat. 255."

The Comptroller General goes on to say that the Government cannot contractually assume a liability for the negligence of its own officers, employees, or agents. In another case in which the Government agreed to sweeping indemnities to the contractor, the Comptroller indicated that the portion regarding such indemnity was null and void and that the contracting officer had exceeded his authority in entering into such an agreement, (7 Comp. Gen. 507).- Contracts

3. It therefore appears that sections 2, 4, and 5 of the garage's lease regulations are inapplicable to the Government. Any torts of Governmental employees can, of course, be settled as appropriate by the head of the Agency under the authority and within the limits of the Federal Tort Claims Act.

4. We were also asked to give an opinion on the propriety of insuring the invitees and their property. For the purposes of liability insurance, an insurable interest would depend on the potentiality of a claim for damages. Since there is no actual agency relationship between the garage and the Government, and the Government cannot be bound by any indemnification provisions of a contract, a potential liability for the negligence of garage employees does not appear to exist. Unless the invitee enters into a personal agreement with the garage, there is no assumption of liability on his part, and he can take legal action against the garage for any injury suffered through the negligence of the garage's employees. An invitee would, of course, be personally liable for his own torts.

25X1A9a

[redacted]

Contracts (Damages)

Office Memorandum • UNITED STATES GOVERNMENT

TO : Files

DATE: 18 October 1948

FROM : Office of the General Counsel

SUBJECT: Limitation of Damages
XG-129, [redacted] 25X1A5a1

Contracts Damages

1. This contract provides for the installation, and maintenance and operation of a burglar-alarm system. This contract contains a clause limiting the liability of the contractor to the Government for each breach. The liquidated damages are nominal ($50.00) and are proposed on the basis that it would be "impractical and extremely difficult to fix the actual damages". In this regard, it is assumed that the contents of the vault protected will consist of almost, if not, entirely classified papers which are not readily susceptible to monetary valuation.

2. The law appears to be well settled that the parties to a contract may agree on liquidated damages for any breach of the contract when the material or services to be provided under the contract cannot be readily obtained on the open market, and damages would be difficult to determine. The Supreme Court has stated (Sun Printing and Publishing Association v. Moore, 183 U.S. 642) that:

> "The decisions of this court on the doctrine of liquidated damages and penalty lend no support to the contention that parties may not bona fide, in a case where the damages are of an uncertain nature, estimate and agree upon the measure of damages which may be sustained from the breach of an agreement. On the contrary, this court has consistently maintained the principle that the intention of the parties is to be arrived at by the proper construction of the agreement made between them, and that whether a particular stipulation to pay a sum of money is to be treated as a penalty, or as an agreed ascertainment of damages; is to be determined by the contract, fairly construed, it being the duty of the court always, where the damages are uncertain and have been liquidated by an agreement, to enforce the contract."

3. On the other hand, if the stipulation for liquidated damage is, on the face of the contract, disproportionate to possible actual damages, then the sum will most probably be construed as a penalty and enforced only to the extent of actual damages sustained. In passing, it is noted that proper liquidated damages do not have to be proven; it is sufficient to plead the breach of contract.

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4. In reviewing the statutes and opinions, there does not appear to be any restriction of the Government's right to agree to liquidate damages. When 'Time of Delivery' is of the essence or services or material cannot be readily obtained in the open market, an appropriate liquidated damages clause can be properly included in the contract. Generally, liquidated damages should not be permitted to exceed the contract price, although this usually applies to situations where supplies or commodities can be readily obtained, and, in which liquidated damages should not have been stipulated at all. The converse is illustrated in the situation on which the Comptroller commented in 16 Comp. Gen. 344. In that case, damages were stipulated for delays in delivery of two items of material not readily obtainable in the open market. Damages amounted to $800.00 for $105.00 worth of supplies, and the Comptroller stated that although the clause was appropriate, there was no apparent relationship between the agreed sum and the potential injury. In ~~For~~ the absence of a showing of actual damage resulting from the delay in delivery, the provision was treated in the nature of a penalty and not recognized. It should be noted that a contributing factor to this conclusion was the fact that the stipulated damages applied equally to two items and failed to distinguish a suitable measure of damages proportionate to the injury.

5. The opinions of the Comptroller have been directed at contracts in which payment of stipulated damages have worked a hardship on the Contractor rather than the Government. The clause in the contract under consideration is governed by the general rules outlined above, but it also raises the question of whether there is any limitation on the contracting officer's authority to limit the Government's potential right to claim damages. Since the services to be provided cannot be readily (indeed, cannot be satisfactorily) obtained from any other contractor, a liquidated damages clause is appropriate. Since it is assumed that the contents of the protected vault do not have an intrinsic value in money, the amount indicated in the clause may be accepted as appropriate. If at any time there is a loss of property which is susceptible to accurate evaluation, then the stipulated amount might be considered so disproportionate as to permit an assessment of actual damage.

25X1A9a [redacted]

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General Counsel: [redacted] :mes

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Traveling Expenses (Residence)

ADSO 22 October 1948

Assistant General Counsel

25X1A8a

Audit of Special Funds Expenditures for [redacted]

1. Returned herewith is the memorandum to you from SPD, dated 13 September 1948. Attached thereto is the memorandum, dated 13 August 1948, from the Acting Chief, Audit Division, to the Director. You request the opinion of this office concerning the propriety of expenditures in the cases set forth in the attached memoranda.

2. Special Funds Regulations in force at the time of the payments in question provided:

> "Travel expenses will be paid from Unvouchered Funds in the amount permitted by law and the Standardized Government Travel Regulations. No reimbursement will be made for items of expense not allowable under such regulations."

a. In a delegation of authority, dated 1 January 1947, the Director of Central Intelligence authorized you and your Executive Officer to approve the transfer and travel of civilian employees and the payment or reimbursement of all expenses incident thereto -

25X1A8a

> "within the limits of unvouchered funds allotted to the [redacted] by the Projects Review Committee and in accordance with existing laws and regulations."

b. Section 7, Public Law 600, 79th Congress, approved 2 August 1946, provides, in effect that new appointees may be paid expenses of travel from places of actual residence at the time of appointment to places of employment outside the continental United States, and return expenses at the time of assignment to their actual residence at the time of assignment to duty outside the United States.

c. The Subsistence Expense Act of 1926 provides that employees may receive per diem allowances in lieu of subsistence while traveling on official business and away from their designated post of duty. Such per diem must be specifically authorized by a person to whom such authority has been delegated.

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3. Throughout the various Government agencies, questions have arisen from time to time involving interpretations of the cited provisions of law and regulations. In the event of doubt, a Certifying Officer is authorized to submit the voucher in question to the Comptroller General for an advance ruling on the propriety of the proposed payment. Many of these decisions were put in formal form and placed in bound volumes. The decisions of the Comptroller General are looked to for guidance by those Government agencies whose funds are subject to audit by the General Accounting Office. In view of the above, this office, in advising on the propriety of proposed payments or part payments, has looked to the Comptroller General's decisions for guidance in forming its opinions.

4. There are four cases in question, involving a total of $1,960.79. The facts in each particular case are outlined below:

a. [redacted]

25X1A9a

In this case, the amounts in question involve $602.50 per diem during her training period in Washington, D.C., and $70.29 for travel expenses from North Dakota to Washington, D.C. [redacted] was working in Washington, D.C., with the War Assets Administration from 30 September 1946 until 4 April 1947. Apparently, she had made application for employment with CIA prior to 4 April 1947. This is evidenced by her letter, dated 26 March 1947, in which she wrote to CIA that she was leaving on vacation for approximately two months. She furnished an address in North Dakota at which she could be reached in the event further information was desired in connection with her application. At the time she left Washington, D.C., she gave up her living quarters, and, upon her return, on 21 June 1947, she acquired new living quarters. Her EOD date with CIA was 23 June 1947. Subsequently, she was sent overseas by virtue of transfer action, dated 27 October 1947.

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b. [redacted]

25X1A9a

The amount of $472.00, representing per diem paid by CIA, is in question in the case of [redacted] Her Personal History Statement reflects that she lived at [redacted] Street, N.W., Washington, D.C., from August 1939 to August 1945. From August 1945 to September 1946, she was employed with the War Department and stationed in [redacted]. In September 1946, she returned to her previous Washington address, which is the home of her sister. The records indicate she continued to reside there until her departure for overseas duty with CIA. [redacted] EOD date with CIA was 19 December 1946, and from that date until 31 March 1947, she received per diem in the amount of $472.00. She departed from Washington, D.C., on 8 April 1947 for overseas duty.

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c. [redacted]

There is an amount of $480.00 in question which was paid to [redacted] lived in Hawaii until 1943, at which time he enlisted in the Army. At all times he has listed Hawaii as his legal residence. He served with SSU until September 1945 in a military capacity. By military order, dated 26 September 1946, he was directed to travel from China to Washington, D.C., on a permanent change of station. Although not stated in the attached memoranda, it is clearly evident from the files that it was desired by the French concerned that [redacted] be employed by the Agency as a civilian. There are dispatches from the field indicating that [redacted] was entitled to discharge, and recommending that civilian employment be offered him, since he was well qualified and needed in the field. [redacted] was discharged in Washington, D.C., on 10 December 1946 and employed by CIA as a civilian on the next day. His local address in Washington, D.C., from his EOD date until his departure on 11 March 1947 was at the YMCA.

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d. [redacted]

[redacted] was paid per diem in the amount of $355.00 from her EOD date of 16 June 1947 to 3 September 1947, excluding several days of annual leave. This amount is now in question. From November 1941 to April 1943, Miss [redacted] resided in Washington, D.C., where she was employed. From June 1943 to July 1943, she was employed by the Department of State in Chile. In September 1945, she was employed by a private law firm in Washington, D.C. The available records establish that she was still employed with this law firm on 8 May 1947.

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5. The auditors have stated that it appears the actual residence of the four individuals at the time of appointment was Washington, D.C. If the actual residence were not in Washington, D.C., the questioned items would appear to be legal and proper payments. It would appear, therefore, that there are two basic questions to be answered.

a. What was the actual residence, at the time of appointment, of each of the four individuals?

b. If it is determined that the actual residence at the time of appointment was Washington, D.C., is the payment of per diem under such circumstances authorized?

6. In 26 Comp. Gen. 483, 15 January 47, the question was raised as to whether the term "actual residence", as used in Section 7 of

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Public Law 600, includes the "legal residence" or "domicile" of an employee who is appointed under the circumstances outlined in that specific case. The circumstances involved in that case concerned employees in the [redacted] who had come there as children 25X1A6a and could not be said to have had any actual residence in the United States at the time of their appointment. It was stated that the term "actual residence" generally would be understood to mean the place at which the appointee physically resided at the time of his appointment. It was then held that the term need not be so restricted under all circumstances, and that in a case of this type the term "actual residence" may be held to include the legal residence or domicile of such an employee. This principle, in so far as employees of the Panama Canal Zone were concerned, was reaffirmed in 27 Comp. Gen. 567, 1 April 1948.

a. In applying the above principles to the [redacted] 25X1A9a case, we find that she had no physical residence in Washington, D.C., at the time she was requested to report for duty, which should be regarded as the time of her appointment. Although her letter to this Agency stated she was going to North Dakota for a vacation, she had given up her residence in Washington, D.C. Consequently, it is our opinion that Washington, D.C., was not her actual residence at the time of her appointment with CIA.

b. Based on the facts presented, it appears that [redacted] 25X1A9a 25X1A9a was physically residing or maintaining her place of abode in Washington, D.C., at the time of her appointment with CIA. Consequently, her actual residence at the time of appointment must be regarded as Washington, D.C.

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c. In the [redacted] case, the facts indicate that, for the convenience of the Government, he was returned to Washington, D.C., for discharge rather than to the point of induction. The mere fact that he was returned to Washington, D.C., on a permanent change of duty order does not necessarily constitute Washington, D.C., as his actual residence. The PCS orders were required for separation purposes by the War Department, but eliminating the technical acts of the various agencies concerned, the facts clearly indicated that, as between the U. S. Government and the individual, a bona fide travel status was established. In applying the above-cited Comptroller General's decisions to the facts presented in this case, we do not feel that the term "actual residence" need be restricted to his physical presence at the time of appointment. In this case, it is our opinion that his legal residence in Hawaii may be considered his actual residence for the purposes of Section 7 of Public Law 600

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d. In the [redacted] case, the facts presented indicate that she had been residing in Washington, D.C., since 1941, with the exception of a tour of duty with the Department of State in Chile. At the time of appointment, she was physically residing

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in Washington, D.C. Therefore, it must be concluded that her actual residence at the time of appointment with CIA was Washington, D.C.

7. In considering the answer to the question presented in 5 (b) above, we must determine when per diem is payable. Per diem in lieu of subsistence may be paid, if authorized, where an employee is traveling on official business and away from his designated post of duty. Although per diem may be authorized, payment thereof may be made only if the authorization is consistence with applicable laws and regulations. As indicated above, the Comptroller General has issued many decisions interpreting such laws and regulations.

a. In 9 Comp. Gen. 233, 6 December 29, an employee was transferred from one post in the Government to another. Her official station at the first agency was Washington, D.C., and, upon transfer, she was directed by the new agency to remain in Washington, D.C., temporarily before reporting to her new official station. It was stated that no per diem was payable during such period of temporary duty in Washington, D.C., since the employee was not traveling on official business and apparently lived just as she had been living up to the time of her transfer. Consequently, the transfer did not operate to place her in a travel status so as to entitle her to subsistence or per diem in lieu thereof.

b. The basic facts in 11 Comp. Gen. 132, 13 October 31, consisted of the appointment of an employee who was required to perform temporary duty at his place of residence before reporting to his first post of duty. It was held that the temporary duty was performed at the place of residence of the employee at the time of his appointment, and he was not put to any additional expense by reason of such temporary duty. Accordingly, per diem for such period was disallowed.

c. The facts in 15 Comp. Gen. 624, 17 January 1936, are very similar to those in 11 Comp Gen. 132, cited above. It was stated that where the employee enters upon duty at the place of appointment, a travel status entitling him to per diem in lieu of subsistence does not begin until he actually begins travel from that point.

d. The holding set forth in 9 Comp. Gen. 233 was reaffirmed in 20 Comp. Gen. 820, 27 May 1941. The facts in the two cases are substantially similar. It was held that there was no authority under which the employee could be paid per diem at his place of residence before entering upon a travel status.

e. The holdings of the Comptroller General's decisions cited above were again confirmed in 22 Comp. Gen. 869, 6 March 43. In this case, no transfer from one Government agency to another was involved. It was held that subsistence can not be

paid if the temporary duty required of the new employee is in the city of his residence, and therefore entails no extra expenses to be reimbursed. The previous cases were cited, and no apparent distinction was made between the cases where the employee is a new appointee to Government service, and those where he is transferred from one Government agency to another.

8. The memorandum from Special Funds, dated 13 September 1955, cites a number of Comptroller General's decisions which it advances as supporting the propriety of the payments involved.

a. In reviewing 19 Comp. Gen. 414, 2 October 39, it is noted that the Comptroller General held that payment of per diem to an employee in authorized travel status and otherwise entitled thereto was not precluded solely because the employee was assigned to temporary duty at a place which happened to be his home. The facts in this case are that the employee was directed to proceed from his official station in Chicago to Michigan City, Indiana, for temporary duty. The distance involved was approximately 58 miles, and it so happened that the employee maintained his residence in Michigan City and commuted daily to his official station. It was also stated in that decision that evidence of actual expenditures is not a condition precedent to the payment of per diem in lieu of subsistence to an employee shown to be in a bona fide travel status.

b. 10 Comp. Gen. 222, 15 November 30, is cited. This opinion is, in effect, a review of the opinion rendered in 10 Comp. Gen. 105, 29 October 30. Under such circumstances, where employees were directed to report to Washington for temporary duty prior to assignment to their duty stations, the Comptroller General held that, where the employee is required to perform temporary duty en route to his official duty station, he may be reimbursed for the additional subsistence and transportation expenses imposed on him by being required to proceed to some point other than his first official duty station. The employee was requested to report to Washington, D.C., and it does not appear that Washington was his residence. Subsequent to temporary duty in Washington, D.C., the employee was required to proceed to his first official duty station. 10 Comp. Gen. 104 and 225 were cited in support of the principles set forth in 22 Comp. Gen. 249, cited above.

c. It is advanced that the terms "temporary duty" and "travel status" are frequently used synonymously. 21 Comp. Gen. 591, 22 November 41, contains such a statement. The question to be determined in that case was whether or not the travel order which described the duty as "temporary" would be sufficient to enable payment of transportation expenses of the return of the employee to be made where the regulations provide for such payment "while temporarily absent from duty during a period of travel on official business."

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9. A careful review of the cited Comptroller General's decisions has been made. The assistance of the Digest Section of the General Accounting Office was requested, and no other opinions were offered by them. In considering all of the pertinent decisions, it appears clear to this office that, where an employee is appointed at the place of his residence, whether that place be designated his official duty station or a temporary duty station, he would not be authorized to receive per diem in lieu of subsistence until he actually began travel from the place of appointment. The Comptroller General has held, in such circumstances, that travel could not begin until actual travel from that point was begun. Consequently, he is not in a bona fide travel status at the place of appointment. The statement that payment of per diem is not precluded solely because the temporary duty is at the place of residence of the employee is not sufficient to permit payment of per diem where the employee's residence is the place of appointment. The fact that the employee is required to remain temporarily at his place of appointment which is his residence prior to travel to his designated first post of duty does not place him in a travel status so as to entitle him to per diem at the place of appointment.

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a. Payments in the [redacted] case, if otherwise appropriate, are, in the opinion of this office, in accordance with the Special Funds Regulations, since Washington, D.C., was not her place of residence at the time of appointment. O.K.

25X1A9a

b. In the [redacted] case, the facts presented indicate her place of residence at the time of appointment as Washington, D.C. Therefore, it is our opinion that the $472.00 paid to her for per diem from 19 December 1946 to 31 March 1947 was not in accordance with the Special Funds Regulations. NO

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c. Since [redacted] actual residence at the time of appointment may be regarded as Hawaii, payments to him, if otherwise appropriate, are, in the opinion of this office, in accordance with Special Funds Regulations. O.K.

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d. From the facts presented, the actual residence of Miss [redacted] at the time of appointment was Washington, D.C. Consequently, the per diem received by her while in Washington from the time of her appointment, 16 June 1947 to 3 September 1947, in the amount of $378.00, is not in accordance with the Special Funds Regulations. NO

10. For the information and guidance of all concerned, we should like to make additional comments concerning these cases. In examining the records pertaining to the four cases, certain irregularities were noticed in the records.

a. It appears that, in at least one case, the employee was not furnished salary from the date travel began at the place of actual residence, but began approximately two days

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after her arrival in Washington, D.C. In 24 Comp. Gen. 371, 18 November 1944, it was stated that, in the absence of a specific statutory provision to the contrary, a travel status usually connotes a duty status to which compensation attaches. This ruling was made in connection with a case where the Agency involved had authorization to pay expenses of the employee to the first post of duty abroad. The provisions were substantially similar to Section 7 of Public Law 600. Therefore, there should be considered appropriate procedures to ensure salary payments to employees in such circumstances from the beginning of their travel.

b. In all cases, transfer letters were issued indicating a transfer of official station from Washington, D.C., to the respective overseas stations. Such procedure is obviously incorrect. Current S.O. orders prescribe appropriate procedures in such cases.

No legal objection has been taken to the payments on the basis of the irregularities mentioned above or other technical deficiencies. However, the records should reflect the correct status of each employee at all times.

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[redacted]

Assistant General Counsel

25X1A9a

General Counsel: [redacted] enclosures

cc: CPD
CFD
[redacted] 25X1A9a

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DRAFT

[redacted]:mes

25 October 1948

The Director

Assistant Director for Special Operations

Traveling Expenses (Advance of Funds)

25X1A9a Travel Advances - [redacted] Deceased)

1. In accordance with the request of 3 September 1946, originated by the Chief, Communications Division, an advance 25X1X4 of $200.00 was made to subject decedent in connection with his assignment to a [redacted]. The 25X1A9a travel funds were temporarily advanced from the Special Funds Division in anticipation of repayment to this organization after the processing of travel vouchers through the War Department by [redacted]

25X9A6 [redacted]

the arrival of the investigating party).

3. The absence of an appropriate method of disposing of the travel advance has occasioned a request that appropriate 25X1A9a action be taken to clear the financial records of [redacted]

4. This office has been advised that Public Law 321, 80th Congress, 1st Session, approved 1 August 1947, authorizes the relief of accountable officers charged with responsibility on account of physical loss of deficiency of Government funds, vouchers, etc., if the head of the department or independent establishment determines -

a. That such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and

b. That such loss or deficiency occurred without fault or negligence on the part of such officer or agent.

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This office believes that the loss of the funds and operational items caused by [redacted] death presents a proper case for the

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application of the relief provisions of Public Law 321, subject to the required determinations by the head of the department.

5. In view of the security characteristics of this case, I recommend that it be handled in a manner similar to which like claims are processed under Public Law 321. 25X1A9a

6. I recommend that relief be granted to [redacted] by clearing his financial account in the amount of $200.00 on the following basis:

a. The loss involved occurred under conditions which authorize the relief of accountable officers of the Government under the provisions of Public Law 321, 80th Congress, approved 1 August 1947; and

b. Any opportunity of repayment to CIA, presented by processing of travel claim, as originally contemplated under paragraph 1. hereof, by legal representatives or heirs of subject decedent, will be covered by coordination with the Army Central Adjustment Bureau, which will prepare a folder to indicate a credit to the account of this Agency.

7. It is submitted that the interests of the Government are amply protected by the above.

DONALD H. GALLOWAY

25X1A9a

General Counsel: [redacted] mes

cc - Director's Files
ADSO
SPD
CAB

[redacted]

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Officers & Employees

L. R. Houston

[redacted] 25X1A9a

9 November 1948

25X1A6a

"De facto" Employment of [redacted] Attendant.

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1. In accordance with your verbal request, I have examined the possibility of treating the mess attendant at [redacted] as a de facto employee for the period he was carried on the Agency's payroll.

2. The Comptroller (3 Comp. Gen. 10 12) has stated the general rule that:

> "Service rendered as a de facto officer can not form the basis of any legal claim against the Government for compensation, therefore, but compensation already paid for services rendered as a de facto officer may be retained if not in excess of the reasonable value thereof."

In the situation presented a person holding a position as register and receiver of a U. S. land office was considered ineligible to also hold the office of commissioner. This prohibition resulted from the specific statutory provision ("dual compensation" not applicable), but the employee was held a de facto officer for the period actually employed in the latter job. In opinion B-42222, dated June 9/44, a statutory prohibition of the employment of aliens not only prevented the payment of salary but also the retention of any portion improperly paid--regardless of whether the officer was de facto or de jure. And, in 15 Comp. Gen. 587, the Comptroller stated that a person fraudulently obtaining employment could at most be regarded only as a de facto employee, although the question of refunding salary payments was not raised. There are also numerous opinions involving retention beyond retirement age, appointment after retirement, and holdover beyond expiration of appointment period, in which the general rule was restated. (See 3 Comp. Gen. 823; 8 id. 73; 10 id. 554; 12 id. 754; and 22 id. 300.) Work prior to acceptance of appointment or reporting for duty has on two occasions classified the employee as either de facto or volunteer (8 Comp. Gen. 369; 18 id. 81). In all of the situations reviewed above, however, the objectionable defect has lain in the individual's personal eligibility for the office.

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He has failed to qualify as a de jure officer because he was prohibited by either a statutory provision or a rule of policy. But, in each case, a de jure office existed. Where such a de jure office does not exist, then there can be neither a de jure nor de facto officer. This was clearly presented by the Comptroller in 3 Comp. Gen. 647. In that case, a member of the Marine Corps was denied the right to compensation for mail clerk in an American legation in China when the office had not been established in accordance with law.

3. In the instant case, the mess was established for the convenience of a minority group of individuals. If a Government mess was not authorized, then the inclusion of a messman in the T.O. appears to be illegal per se and the office did not exist de jure. Therefore, the Government's claim against the recipient for refund of the amount of pay already received appears to be proper.

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[redacted]

APPROVED:

EXEC FOR A & M

Asst. Chief, Fiscal Division 12 November 1948

Office of the General Counsel

Claim against Railway Express Agency

1. Your memorandum of 4 November 1948 forwarded the file on Government Bill of Lading No. XG-627 and requested advice on the appropriate action to be taken. There is no need to repeat the facts which are clearly presented in your memorandum.

2. The Railway Express Agency is apparently unaware that a Government Bill of Lading - rather than their regular commercial shipping receipt - was used. Hence they have attempted to apply their Standard Limitation of Liability. Reserving the question of whether such a limitation could be applicable to the Government even if accepted, the carrier here has no recourse to a provision not contained within the boundaries of the agreement. To forestall a possible argument that condition No. 2 of the Government Bill of Lading would incorporate the terms of the carrier's standard commercial form unless specifically excepted (as in Condition No. 7), attention is directed to the decision of the Comptroller General in 19 Comp. Gen. 537. He cited the judicial conflict that existed in regard to the sovereign authority of the Government and the power of its agents to restrict or bargain away certain advantages demanded by public policy. Among these advantages was the freedom of the Government from the usual time limitations for filing claims. The Standard Government Bill of Lading now contains a provision (Condition No. 7) that in case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipment shall not apply as to the period within which notice shall be given, claim made, or suit instituted. Even in the absence of this provision, however, the Comptroller felt that the Government was not subject to the usual commercial limitations, and the deletion of the condition could not bring the limitations into operation. In the present situation, the reason is even more compelling for preserving the Government's freedom from a commercial restriction which would limit the liability of the

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carrier without regard to liquidated damages. The contracting officer has not agreed to such limitation by using the commercial form and it is not felt that the Government is subjected to the restriction by implication.

3. The above opinion is provided primarily for your reference in event the carrier raises the argument suggested. Since he is apparently under the impression that the usual commercial express receipt was used, it is suggested that you call his attention to the fact that a Government Bill of Lading was employed, and that it contained no limitation of damages. In the meantime, it appears proper to continue to withhold from current unpaid carrier bills an amount sufficient to cover the damage, - or, of course, accept a payment in the amount of the total damages.

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[redacted]

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General Counsel: [redacted] :njc

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Nº 125

Chief, Special Funds Division 12 November 1948

Office of the General Counsel

Weight Allowances under Foreign Service Travel Regulations

25X1A6a

1. Reference is made to proposed official dispatch dated 25 October 1948 from the Chief, FBZ to the Chief of Station, [redacted], concerning the application of weight allowances to employees with designations. The application of weight allowances arises from Agency adoption of Foreign Service Travel Regulations for employees in such catagory. You have referred this dispatch to this office for coordination.

2. This office is coordination this matter by memorandum in place of signature or initial coordination due to the interpretative character of the proposed communication.

3. It is apparent that the Foreign Service Travel Regulations were adopted to achieve an equalization of benefits between CIA employees having a designation status and State employees having actual Foreign Service status. Paragraph 3 of referenced memorandum accomplishes this objective with respect to weight allowances.

4. To deny an additional 7,750 pounds to those employees who arrived at their overseas station prior to 1 January 1948 would be to further the difficulties of equalization which have affected CIA designees in the past.

5. The cut-off date of 1 January 1948 determines the date of adoption of Foreign Service Travel Regulations and the date on which additional weight allowances become available to eligible employees. Any retroactive grants prior to 1 January 1948 would be opposed to Agency intent and would foster a condition of unsettlement in administrative accounts.

6. On the basis of the foregoing and the memorandum heretofore referred to, this office concurs with the interpretations concerning additional weight allowances.

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[redacted]

Legal Sessions

Travel Procedures & Regulations

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No 126

SFD

16 November 1948

Office of the General Counsel

Executive Order 9805

1. The problem presented in your memo of 28 October has been considered and the appropriate authorities reviewed. The writer has also discussed the Order with its author and members of the Bureau of Federal Supply and the G.A.O.

2. Executive Order 9805 (as amended by Executive Order 9933) was issued under the authority of P.L. 600, 79th Congress. The amendment, however, is not pertinent to the problem presented in your case.

3. There are some patent inconsistencies on the face of the Order itself and more than a normal confusion has been encountered in its application. The basic limitations of Government liability, however, are simply seven thousand (7000) pounds for uncrated goods and an additional allowance of twenty-five per cent or a total limit of eight thousand seven hundred fifty (8750) pounds for crated. This applies to all goods regardless of the mode of transportation. The Order carries a further limitation of an arbitrary evaluation of gross weight at eighty per cent of the combined weight of goods and crating in certain cases. G.A.O. has informed me that this is used only in shipments by van where the reduction is made because of the shipper's normal practice of crating only part of the goods. The limitation is ignored in shipments by truck, rail, or vessel where such partial packing is not employed. Thus, in answer to your specific question regarding a shipment of five thousand nine hundred eighty (5980) pounds of goods in a lift van of three thousand seven hundred twenty (3720) pounds involving transportation all or partly by vessel (apparently by an employee having an immediate family), a maximum limit of eight thousand seven hundred fifty (8750) pounds is applicable and any amount in excess of that figure cannot be accepted as a proper charge against the Government.

4. At least in the Bureau of Federal Supply, the twenty-five per cent differential for packing is considered inadequate. If application of the Order results in an almost standard hardship to our employees, then you may wish to discuss internally a possible change through concerted action by various agencies. For this purpose, Mr. Newenhaum, X-371, in the Bureau of Federal Supply would probably be willing to coordinate the effort. Upon request this office will be pleased to assist further in this matter.

25X1A9a [redacted]

25X1A9a [redacted] Legal Decisions

General Counsel: 25X1A9a [redacted] :msk SECRET

Legal Procedures & Regulations

No. 127

Unopened

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FDH
CAS
Office of the General Counsel

16 November 1948

25X1A9a

Damage in Shipment of Household Effects of [redacted]

1. Reference is made to your memorandum of 26 October 1948, which is concerned with the damaged shipment of household effects of [redacted], arising out of his transfer to his present post of duty at [redacted].

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2. You requested this office to consider the memorandum from [redacted] dated 3 September 1948, and the copy of his letter to [redacted], dated 7 May 1948, and determine if it would be proper for [redacted] to file a claim against this organization for breakage and damage to his household effects by an apparently irresponsible shipping concern recommended by members of this organization. You refer to Foreign Service Regulation 592.1 which authorizes the presentation of claims of this character by members of the Foreign Service under certain conditions. You point out that, while Mr. [redacted] is not a member of the Foreign Service, he is a [redacted] employee.

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25X1C4a

3. It is the understanding of this office that employees destined for a transfer to an overseas post receive the assistance of members of this organization, who recommend experienced export packers to arrange for the packing and crating of household effects and goods. This service or information is furnished on a gratuitous basis, and the employee concerned is under no obligation to enter into contractual arrangements with the recommended export packer. He is free to accept or reject the suggested export packer and to search elsewhere should he so desire. It is supposed that the recommendations of the members of this organization are made on the basis of prior experience with the recommended export packer, which experience is of a generally satisfactory nature. In the absence of a clear history of irresponsibility on the part of the export packer, the recommendations made by members of this organization would appear to be proper.

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4. Although the file does not present a complete record, it is apparent that the employee was under no compulsion to accept the [redacted]. The recommendation appears to have been made in good faith on the basis of satisfactory past experience with the company, which recommendation the employee was free to accept or reject. There is no indication or evidence on the face of the record that the employee has been denied his normal right of recourse, as witnessed by his correspondence with [redacted].

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5. Foreign Service Regulation 592.1 provides a method whereby an employee, officer, or clerk of the Foreign Service may submit his

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claim, under certain conditions, to a Claim Board. After the required findings and recommendations have been made by the Claim Board, it passes through the Secretary of State, the Bureau of the Budget, and, finally, the President who submits the claim to Congress if he approves. There is no authority within the Department to settle the claim which characterizes the subject regulation as procedural rather than remedial. It is interesting to note that the standards of the Claims Board require, prior to its favorable action thereon, that the claimant have exhausted his legal remedies against the common carrier. The Claims Board is also required to take into consideration whether the failure of the claimant to carry insurance on his property is indicative of negligence.

6. Recognition of these matters automatically, and without a record including the basic facts and findings of the interested activity, would place the Government in a position of insurer, which is patently opposed to traditional government policy.

7. It is the understanding of this office that, prior to leaving for their overseas station, employees are informed, particularly with respect to transocean shipments, that insurance is advisable. It is recognized that the effects are handled many times and by various classes of people during the course of a journey, and it it apparent that the greatest protection to the employee lies in adequate insurance coverage and not in the pursuit of difficult legal remedies after sustaining damage.

8. On the basis of the record presented, the only conceivable avenue of relief might be available in the hardship provisions of Special Funds Regulations, 10.4; an essential condition to the exercise of that relief power, however, being the existence of an emergency. Subject case is silent in this regard. If other remedies, beyond the scope or coverage of the written regulations, are contemplated it becomes a matter for administrative cognizance and due presentation of the facts, findings, and recommendations thereon.

9. Thus, it would appear that there are no facts of record which distinguish this case from others which have come to the attention of the administrative activities handling these matters; that the position in which the employee finds himself is not traceable to any misrepresentation, lack of judgment or breach of duty on the part of members of this organization; that the Government has not intervened to preclude the employee from pursuing his legal remedies against the [redacted]; that no administrative findings have been made on the basis of pertinent material facts; that the employee has not completely exhausted his remedies against the carrier or packer of the goods and household effects.

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10. In the absence of a sufficient affirmative showing on the part of the employee, distinguishing this claim from others already presented, it is questionable whether the present record provides a proper basis on which the Director may consider its merits.

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[redacted]

cc: CAS
SPD
[redacted] 25X1A9a

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General Counsel: [redacted]mes

FILES

16 November 1948

[redacted] 25X1A9a

Contracts (Additional Work)

Auto Repair Contract - Additional Work

1. The Contracting Section has requested our opinion regarding the legal propriety of including one additional car under an existing contract for repairs and services to certain Agency vehicles. The vehicles are listed in a referenced list attached to the contract and total about thirty-four (34) cars, all but three of which are Fords. The remaining are Mercurys. A new car has now been acquired, and the Contracting Officer wishes to add it to this list.

2. Primarily, the question for consideration here is the possible violation of the requirements of Section 3709, Revised Statutes, which provides:

> "All purchases and contracts for supplies or services, in any of the departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals. R.S. Section 3709."

3. In addition to the exceptions indicated in the Statute itself (i.e., personal services and emergencies), advertising has not been considered necessary where a specific statutory exemption exists of where it would serve no useful purpose. The Comptroller has also read into the Statute the additional qualification of reasonableness or magnitude of the change in the contract. Thus, in 5 Comp. Gen. 508, (512), he states:

> "In general, an existing contract may not be expanded so as to include additional work of any considerable magnitude, without compliance with Section 3709, Revised Statutes, unless it clearly appears that the additional work was not in contemplation at the time of the original contracting and is such an unseparable part of the work originally contracted for as to render it reasonably impossible of performance by other than the original contractor."

and, referring to this same opinion, he says in 5 Comp. Gen. 642, (644-5):

> "There may be instances after a contract has been duly and lawfully entered into on behalf of the United States for the doing or acquiring of things authorized by law to be done or acquired, where a change or modification in the contract specifications is essential and in the interest of the United States. In such instances, if the changes materially alter the character or scope of the requirements under the original contract, said contract should be terminated in the interest of the Government and bids should be solicited on the work as changed. If the changes do not materially affect the requirements under the original contract but involve rather an addition thereto, the rule with reference to the procedure to be followed is as stated in decision of January 21, 1926, 5 Comp. Gen. 508."

The basic legislative intent behind Section 3709 is well explained in 18 Comp. Gen. (643):

> "It has been frequently held by the courts and by the accounting officers of the United States that the provisions of the statute are designed to give all persons equal right to compete for Government business; to secure to the Government the benefits which flow from competition; to prevent unjust favoritism by representatives of the Government in making purchases on public account; and to prevent collusion and fraud in procuring supplies or letting contracts."

Considering the purpose behind the provision and accepting the lead of "materiality of the change" indicated by the Comptroller, it is not believed that any exception would be taken by the General Accounting Office if the additional car were added to the list of the original contract provided the car is the same manufacturing make as those included under the original contract, and the inclusion is acceptable to the contractor.

4. The Contracting Officer is being advised accordingly.

25X1A9a

[redacted]

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Legal Decisions Travel Subsistence (Per Diem)

Executive for A&M

17 November 1948

General Counsel

Per Diem Restrictions in Administrative Instruction 30-3

1. The Chief, Budget and Finance Branch, has recommended that there be an agency-wide policy on limitation of time for which per diem may be granted. The Deputy Chief, Management Branch, has recommended that there be no limitation, as employees traveling today lose money on a $6.00 per diem.

2. It is clearly established that under the provisions of the Subsistence Expense Act of 1926, as amended, (5 U.S.C.A. 823), the heads of the departments and establishments have final authority to prescribe the circumstances under which per diems may be granted. The Attorney General's ruling on this situation is of interest. In Volume 37 of the Opinions of the Attorney General beginning at page 219, he considered the question raised by the Secretary of War whether the Comptroller General might fix a limit of 30 days as a maximum period in which an officer might be allowed per diem while on temporary duty at one place. It appears that the Comptroller General had written to the Secretary of the Navy suggesting that the Navy travel instructions be amended to limit per diem to such a 30 day period, and as a result, this amendment was issued by the Secretary of the Navy. The Secretary of War decided not to issue the regulation and asked the Attorney General if the Comptroller General's suggestions would be controlling. The Attorney General answered that in the law Congress has not declared the intention to limit the period for per diem and that therefore the matter of making regulations governing performance of temporary duty at one place is exclusively within the jurisdiction of the Secretary of War and the President and that the Comptroller General may not go behind the Secretary's decision and must be guided by it.

3. Obviously under this ruling, the Director has authority to limit or to remove limitations on the payments of per diem. We feel, however, that the attitude of the Comptroller General, as expressed in the letter to the Secretary of the Navy cited above, should be given consideration.

4. The objections to any limitation raised by the Deputy Chief, Management Branch, appear to be based on the fact that people actually traveling lose money at $6.00 per diem. The limitation, however, is only to temporary duty performed at one place. Per diem is an allowance to make up for extra costs incurred while traveling away from home. Limitations of time have been imposed by various departments on the theory that when an employee stays in one place for an extended period of time, he can make arrangements which lessen or eliminate the extra expense. There are precedents for such limitations in various agencies such as Navy, Army (despite the attitude displayed above), and Interior. Others probably could be found.

5. In the case of the Interior Department, an opinion of the Comptroller General is of interest. The Assistant Secretary of Interior approved a regulation stating that when an official remained at a temporary duty station in excess of 60 days, that place became ipso facto his headquarters, and per diem would necessarily cease. The Secretary of Interior attempted to make an exception to the Department's regulation in a particular instance. The question was put before the Comptroller General as to whether the payment already made could thus be allowed. His ruling in 10 Comp. Gen. 242 stated that inasmuch as the Department's regulation was made under the authority of the Subsistence Expense Act of 1926, it had the force and effect of law, and payments contrary thereto by the disbursing agent were as invalid and unauthorized as though they had been expressly prohibited by statute, and therefore allowance could not be made in this instance although the regulation had subsequently been rescinded.

6. The above comments are offered for information in making the administrative determination but in no sense impair the Director's authority to control allowance of per diems up to the legal limit, subject to the over-all regulations approved by the President. Since per diems may be administratively reduced or eliminated at any time, it might be sufficient as an over-all agency policy for the Director to require appropriate officials to review all cases where per diem is paid to an individual on temporary duty at one place for a period of more than 30 or 60 days, with a view to reducing or eliminating per diem at that time if the circumstances warranted such action.

LRH:mbt

LAWRENCE R. HOUSTON

Medical Treatment
(Public)

Administrative Officer, Medical Division 18 November 1948
Attention: [redacted] 25X1A9a
Office of the General Counsel

Release

1. Subject release forwarded for comment by your memorandum of 8 November is returned herewith.

2. A Federal employee has recourse to two paths of action in the event he is injured in the course of his employment. (It is assumed here that the employee is required to accept the injections as a condition of his employment and hence the inoculation is given in the course of that employment.) He may accept the benefits provided under the Employees' Compensation Act, or he may sue under the Federal Tort Claims Act. At the present time, his remedies are considered to be elective and he is not entitled to the benefits of both. If he chooses the Compensation Act as the vehicle to recovery, the release would be ineffectual in barring recovery. As a matter of policy - although the statute itself is silent - the Bureau of Employees' Compensation Commission does not recognize the waiver. If he elects the Tort Claims Act, a waiver would be void for want of consideration - which would also be true under the Compensation Act. Although the inoculation may be considered a condition of employment which the employee must presumably accept in order to continue his work, he cannot be required to waive his legal rights to seek compensation for any injury resulting from a negligent injection.

3. For the reasons given above, it is not believed that the enclosed release serves any sound purpose. Although there does not appear to be any strict legal prohibition against requiring an employee to execute the release, it is suggested that the practice be discontinued in view of its futility.

25X1A9a
[redacted]

Encl. 1
Release (Form 37-39)

General Counsel: [redacted]:msk 25X1A9a

Legal Decisions
Tort Claims

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RESTRICTED

19 November 1949

Executive for A&H

General Counsel

Contract Physician for [redacted] [redacted]

25X1A7a 25X1A6a

1. The attached proposal for contracting with a private physician to conduct an emergency and preventive health program for the [redacted] station on [redacted] has been referred to this office for opinion as to whether it is legally feasible.

25X1A7a 25X1A6a

2. It appears that such arrangements were specifically contemplated in the Health Services Act of 1946 (5 U.S.C.A. 150), which authorized the heads of the departments and agencies to establish health service programs by contract or otherwise. The intent of this provision is clarified by a legislative note in the 1946 U. S. Code Congressional Service, page 1420, which states that under certain situations there will not be justification for establishing health units in the agency, and in such cases necessary services can be procured by contract with medical organizations, private physicians, or industrial health units. The law restricts the furnishing of such health services to emergency treatment and preventive health programs.

3. The attached proposal appears to be within these limitations, but it should be made quite clear that the services of the Contract Physician are not engaged for private treatment for the personal benefit of employees. Such treatment must be paid for by the employees, and if the injury or illness is incurred in line of duty, claim may be made under the Employees Compensation Act.

4. Before implementation of the program, the law requires consultation with the Public Health Service and consideration of its recommendations. The law also required that the program be within the limits of appropriations made available therefor. Discussions with the Chief, Budget and Finance Branch indicate that appropriated funds are available to support this program.

LAWRENCE R. HOUSTON

LRH:mbt

RESTRICTED

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Nº 136

compensation in lieu

~~CONFIDENTIAL~~

Director 19 November 1948

General Counsel

25X1A7b

Reimbursement for Mess Attendant at [redacted]

1. We have made what we believe to be an exhaustive review of the laws, regulations, and decisions concerning the situation outlined in the accompanying file. As a result, we have reached certain conclusions and are in a position to make certain recommendations.

2. The conclusions are:

a. That there is no justification for the use of unvouchered funds to make any payments in connection with this case;

b. That there is no valid justification for payment by the Government of the entire amount to the mess attendant;

c. On the difference between what the employees are willing to refund and the amount paid by the Government, there is sufficient doubt as to the necessity for requiring collection from the certifying officer or the employees to justify arguing the point with the auditors or the Comptroller General if it is raised.

Recommendations: a. The amount the employees are willing to refund be immediately collected and forwarded to the Budget and Finance office in Washington for appropriate disposition;

b. That the certifying officer and the employees be informed that the question of further collections is not for final determination by this Agency but can be finally decided only by the Comptroller General but that this Agency will make every effort to justify this amount as a proper obligation of the Government on grounds we believe have at least some validity;

c. That the vouchers concerned be held for audit in the normal manner and not until the question is raised by the auditor should the issue be joined. At that time, we will try to convince the auditor of the validity of our contention that under the

~~CONFIDENTIAL~~

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~~CONFIDENTIAL~~

peculiar circumstances surrounding this case the overpayment need not be collected back. (The alternative would be immediate submission to the Comptroller General of the whole problem, but we feel this would somewhat weaken our point, and conceivably on normal audit, the issue may not be raised.)

3. A detailed memorandum outlining our arguments in support of the above conclusions and recommendations is attached.

LAWRENCE R. HOUSTON

LRH:mbt

~~CONFIDENTIAL~~

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Legal Decisions
Travel Procedures
Regs

Director

19 November 1943

General Counsel

Traveling Expenses (Residence)

Audit Exceptions Concerning Per Diem Payments

1. We have considered carefully the attached file concerning per diem payments made to [redacted] and [redacted], with particular reference to what action, if any, the Director is legally authorized to take. In spite of the lengthy memoranda which analyzed the technicalities of these cases, the situation seems simple. 25X1A9a 25X1A9a

2. Per diems were authorized for each employee while in Washington on temporary duty, and vouchers were certified for payment by the certifying officers. At the time the payments were authorized and made, papers were on file in the office indicating that their addresses were in Washington. (It is apparently true that in conversations the employees were asked where their homes were and mentioned other than Washington addresses, but the fact remains that Personal History Statements and other documents set forth addresses in Washington.) It is apparent therefore that, although appointed for overseas stations with temporary duty in Washington, neither [redacted] 25X1A9a nor [redacted] entered into actual travel status until they left Washington. 25X1A9a

3. Under the Standardized Government Travel Regulations, per diem may not be allowed until an employee enters into a bona fide travel status. Your instructions and the Special Funds Regulations in force at the time required compliance with the Standardized Government Travel Regulations. We feel it must be concluded that there was no basis for certification of the per diem vouchers for [redacted] as no circumstances existed which would raise an obligation on the part of the Government. This is based on the responsibility placed by law on the certifying officer, as set forth clearly in a recent decision of the Comptroller General (28 Comp. Gen. 17, B-74820). 25X1A9a

4. In that case, the Commissioner of Internal Revenue had certified a voucher in which an erroneous computation had been made by subordinates. The exception was not taken by the auditor until two and one-half years later, by which time the statute of limitations prevented any recovery from the taxpayer. The Secretary

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No. 139

MISSING PAGE

ORIGINAL DOCUMENT MISSING PAGE(S):

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Approved For Release 2001/08/28 : CIA-RDP67-01057A000100020001-8

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6. This ruling of the Comptroller General is based on the fact that because of the error in computation there was no obligation on the part of the Government. We believe it is directly applicable to the present situation, for through a misapprehension of the facts, payments were made when, under the existing circumstances, there was actually no obligation on the part of the Government as there was no travel status.

7. We have given particular attention to the special authorities vested in you as Director of Central Intelligence over unvouchered funds available to the Agency. There is no question of your power to use these unvouchered funds as you see fit. No one in Government is authorized to go behind your certification. But it is our opinion that inherent in this grant of public funds to your sole discretion are certain restrictions as to the legal exercise of this power. Unvouchered funds are granted on the acknowledgment by Congress and the Comptroller General that such funds are required for security of operations, support of abnormal operations, to meet emergencies, and to take care of extraordinary expenses necessary to the proper exercise of CIA functions. Wherever these elements, or any of them, are present, there will be no question of the legality of payments you deem necessary, even in cases where ordinarily there would be no obligation on the part of the Government.

8. Applied to the two instant cases, we reach the following results. There appears to be no security consideration which would require the payment of per diems in either case. Failure to pay per diems would not hamper or prevent the performance of essential operations. There were no emergency or extraordinary features connected with either case. It is true that there is no law which requires you to follow the Standardized Government Travel Regulations in all cases. However, we find a clear guide to this situation, too, in a Comptroller General's decision set forth in 23 Comp. Gen. 864.

9. The Office of Economic Warfare was given an appropriation which specified that travel expenses might be paid for travel outside the United States without regard to the Standardized Government Travel Regulations and the Subsistence Expense Act of 1926. An employee traveled from Washington to Lisbon where he became ill and was ordered to return. An exception was taken to payment of the voucher on the grounds that the travel performed was for personal reasons and therefore not an obligation of the Government. The

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Office of Economic Warfare pointed to their appropriation language, claiming that they were exempted from the normal travel limitations. The Comptroller General referred to previous decisions concerning travel for personal reasons and then stated as follows:

> "While those decisions were rendered more particularly with reference to employees whose official travel was subject to the Subsistence Expense Act of 1926, 44 Stat. 688, as amended, and the Standardized Government Travel Regulations, nevertheless the rule appears equally applicable to official travel not controlled by said statute and regulations, as in the instant case. That is to say, the appropriation for traveling expenses here chargeable may not be regarded as available for travel not performed on official business but for personal reasons."

10. In view of the foregoing, it is our opinion that the payments to [redacted] 25X1A9a were illegal and that the exceptions in the accounts of the certifying officers were properly taken. As pointed out above, there was no obligation on the part of the Government until travel status was attained. We are unable to find any valid basis for approving the expenditures.

25X1A9a

25X1A9a 11. In the case of [redacted], there is a factual question which might require clarification. She entered on duty on [redacted] 1947. Available records establish that from September 1945 until 8 May 1947 she was working and living in Washington. It was therefore assumed by the auditor, and in the subsequent discussions, that she continued to reside in Washington from 8 May until the time of her entrance on duty with CIA. It is conceivable that she actually moved from Washington during this period and was brought back by CIA for temporary duty while en route to her foreign post. If this were true, it would give a technically legal basis for allowance of per diem, whatever the wisdom of such an action from an administrative point of view; but the burden of proof to establish such actual change of residence is on the certifying officer and the employee.

LAWRENCE R. HOUSTON

LRH:mbt

[redacted]

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Compensation

Employment Contracts

Deputy Director

23 November 1948

General Counsel

U.S. Officials Receiving Salary from Outside Sources

1. The basic statute pertaining to this subject is set forth in 5 U.S.C.A. 66 as follows:

> "No Government official or employee shall receive any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality, and no person, association, or corporation shall make any contribution to, or in any way supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States. Any person violating any of the terms of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $1,000 or imprisonment for not less than six months, or by both such fine and imprisonment as the court may determine."

2. There are few decisions on the application of this statute, and none of them fit precisely the case in point, which involves payment of compensation by a private corporation to a U.S. official. The Comptroller of the Treasury ruled that if there was an inference that the purpose was clearly to enlarge the personal emoluments of officials by means of funds privately contributed, the above-cited statute would apply (43 Comp. Dec. 43). The Attorney General has ruled that where no facts are presented which would justify such an inference and where the arrangement proposed is not intended to and will not result either directly or indirectly in payment of increased salaries, the prohibition does not apply (33 Op. Atty. Gen. 273).

3. Aside from the precise provisions of the above statute, the Comptroller General has indicated that in certain cases the private employment might be antagonistic to the official duties of the employees and that public

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policy might raise objection to the dual status (14 Comp. Gen. 755). In part, this last ruling appears to be based on special considerations which would not apply to our present case, as it was a depression ruling, and the Comptroller was noting that by accepting the private employment, the Government employee was performing work outside at the expense of the unemployed at a time when the Government was spending billions on relief. However, the public policy against inconsistent or antagonistic duties should be observed.

4. Thus, the Comptroller General states in 16 Comp. Gen. 127:

> "Manifestly it is contrary to public policy, if not prohibited by statute, for any Federal, State, or county official to enter into private arrangements with either a private or a public corporation whereby such official is to receive 'extra' payments, not authorized by law, for official services rendered by him either during or outside of regular office hours."

He then cites the law set forth above as one of the statutes declaratory of this provision and brings attention to the fact that two high ranking Army officers had shortly before been dismissed after conviction of misconduct involving those statutes and the public policy of which they are declaratory. It is noted that this ruling goes only to extra compensation for performance of official duties, i.e., performance of duties which are inherent in the office he occupies. It would not appear to prohibit performance of private service requested by a private employer, as the Comptroller General has further stated that he knows of no law or regulation prohibiting payment of Federal pay during authorized annual leave solely because the employee during such leave worked for and received compensation from the private employer, provided that the private salary does not constitute a contribution toward the Federal salary in contravention of the Act set forth above. (20 C.F.R. 735)

5. The conclusion appears to be that there is no objection to an arrangement between a U.S. official and a private corporation, whereby he will perform and be paid for services in no way required by his official duties and which he performs outside of Government hours or while on annual leave so long as such services are not clearly inconsistent with his official duties.

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6. Since the penal prohibition runs only to the employee or his private employer, our opinion as advisors to the Agency may not be adequate protection when considering any arrangements which may be made. We feel the individual should be advised that it might be well for him to seek private counsel in order to make sure that his arrangements with the private employer are bona fide and do not raise an inference that his salary is being supplemented from outside sources. Of course, we shall be glad to give assistance if requested.

LAWRENCE R. HOUSTON

LRH:mbt

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Chief, Medical Services

29 November 1948

Office of the General Counsel

Medical Supply Procedure

1. Reference is made to your memorandum of 14 October 1948, which raised certain questions in regard to the handling and control of narcotics and allied drugs. Since some of the specific questions require alternative assumptions, we believe a more comprehensible reply can be given through a general explanation than through isolated answers.

2. Generally, international narcotics control is effected through protocol which requires "member" nations to estimate their annual supply and demand and adhere to such limits. Thus, even licensed import or export is restricted to a quota. Within the countries themselves, the degree of control varies with local inclination. The United States has several regulatory federal statutes, not all of which require our attention (e.g. there is no need to consider Marijuana control). They each serve their ambit and are complimentary in function. First, is the Harrison Narcotics Act which is designed to control trafficking, transportation and possession within the United States and its insular possessions. It requires registration and the payment of a tax, and it is ostensibly a tax measure although the penalties are enforced by the Bureau of Narcotics. Under this Act, Government officials are exempt when performing any of the business indicated in the Act within the course of their official duties, subject to proof of their entitlement to this exemption. The Narcotic Drug Import and Export Act regulates just what its title indicates. Certain conditional exemptions contained in the Harrison Act are not contained in the Import-Export Act, nor are Government officials exempt. It can be noted that drugs, not initially included, can be brought within the scope of both Acts by Presidential Proclamation. In general, the export of narcotics is unlawful unless the place of entry is a country party to the International Opium Convention of 1912, and then only if the country (1) controls imports, (2) the narcotic is assigned to an authorized licensee, (3) it is for medical and legitimate uses, (4) it will not be re-exported, and (5) a shortage and demand for the narcotic exists. Smoking opium is unconditionally prohibited in all events. Insofar as the mechanics of obtaining a license are concerned, application is filed with the Commissioner of Narcotics, supported by the necessary information and an import license or permit

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Legal Decisions - Drugs.

from the country of entry. Records should be retained by the exporter, identifying the foreign consignee. An additional statutory provision (which is not part of the Import-Export Act) controls the possession of narcotics on board a United States vessel on a foreign voyage.

3. Within the United States and its insular possessions, the Food and Drug Administration and the Bureau of Narcotics act in conjunction. The former regulates the admission of all drugs (whether or not narcotics) into interstate commerce and some control on their handling; the latter makes a determination on the narcotic properties of a drug. In this respect, the Food and Drug Administration destinguishes between "habit-forming" drugs producing only a psychic dependence and "addictive" drugs causing both psychic and physiological dependence. Barbiturates, for instance, are in the twilight zone of control and are not subject to federal narcotic regulation. Some states may exercise control over the dispensation of this type of drug but the Food and Drug Administration requires only that the package be appropriately marked "May be habit-forming."

4. In view of the general intent of the statutes controlling both the domestic as well as the international use of narcotics, it seems cogent that an authorized use by a Governmental official - clearly in the performance of his duty - can be justified even in the face of a technical violation of a United States statute. The relative compulsion of enforcing a federal prohibition should certainly be balanced against the desideratum of accomplishing an end which is equally in the interest of the Government. It is therefore suggested that adequate justification for the issuance of any narcotics be obtained and retained on record whenever the dispensation of narcotics is required. Adequate proof that the narcotic was issued by the Medical Officer in accordance with an operational order would appear to insulate the Medical Officer against prosecution. As a practical matter, it is understood that the only narcotic derivative which is dispensed at the present time is paregoric. This is issued in small personal quantities and is conditionally exempt under the Harrison Act. There is, therefore, no potential liability provided it is for medical or legitimate purposes. Barbiturates, as explained above, are not subject to federal control at the present time, and, finally it is understood that drugs used in support of operations have not been narcotic in nature.

5. This office will be glad to advise you regarding any specific situation that may occur, but, in the meantime, it is hoped that the above discussion provides at least a general background for action.

General Counsel [redacted]:msk 1477 [redacted] 25X1A9a

25X1A9a

No 147

SECRET

1 December 1948

Disposition of Records

MEMORANDUM FOR THE FILES

SUBJECT: Disposal of Certain Working Files and Reference Copies of Cables and Ciphers

FROM: [redacted] 25X1A9a

25X1A9a

1. The question was raised by [redacted] in regard to the disposal of certain working files and reference copies of cables and ciphers. An application for the disposition of similar SSU records was made to Archives and approved by the House in 1946. [redacted] 25X1A9a raised the question of whether this authorization was sufficient for CIG and present CIA records, or whether supplemental authority was required. He also asked whether microfilm would be acceptable as a permanent record copy of outgoing messages.

2. I discussed the matter today with Mr. Edgar Campbell who is in charge of the War Records Division at Archives. Mr. Campbell informed me that there had been no clear decision regarding the need of supplemental authority to cover disposition of CIG and CIA records when the original authority was given to SSU. He stated that Archives would not object to disposition of CIA records under the previous SSU authority but indicated that there was a possibility that lack of authorization might be uncovered in the event of an inquiry. [redacted] was advised 25X1A9a of this conversation, and, in conjunction with [redacted] he will present an application for the disposition of CIG and CIA records in conformance with the established procedure of filing an application which will then be presented to Congress for approval. Mr. Campbell will process the application in the meantime and have it ready for immediate submission to Congress when it convenes in January.

3. Mr. Campbell indicated that a microfilm record was acceptable in lieu of paper, but he suggested that it might be advisable to hold an informal conference with the appropriate person in this Agency (probably [redacted] prior to filming in order that the proper sequence and necessary order could be preserved for the use of the Archivist. If [redacted] determines it is necessary to submit these final record copies to Archives, he will confer with Mr. Campbell prior to filming.

25X1A9a 25X1A9a 25X1A9a

25X1A9a [redacted]E

cc:
General - National Archives Regulations
Memorandum of Law - Destruction and Disposition of Records
Legal Decisions - Destruction and Disposition of Records

25X1A9a [redacted]mes

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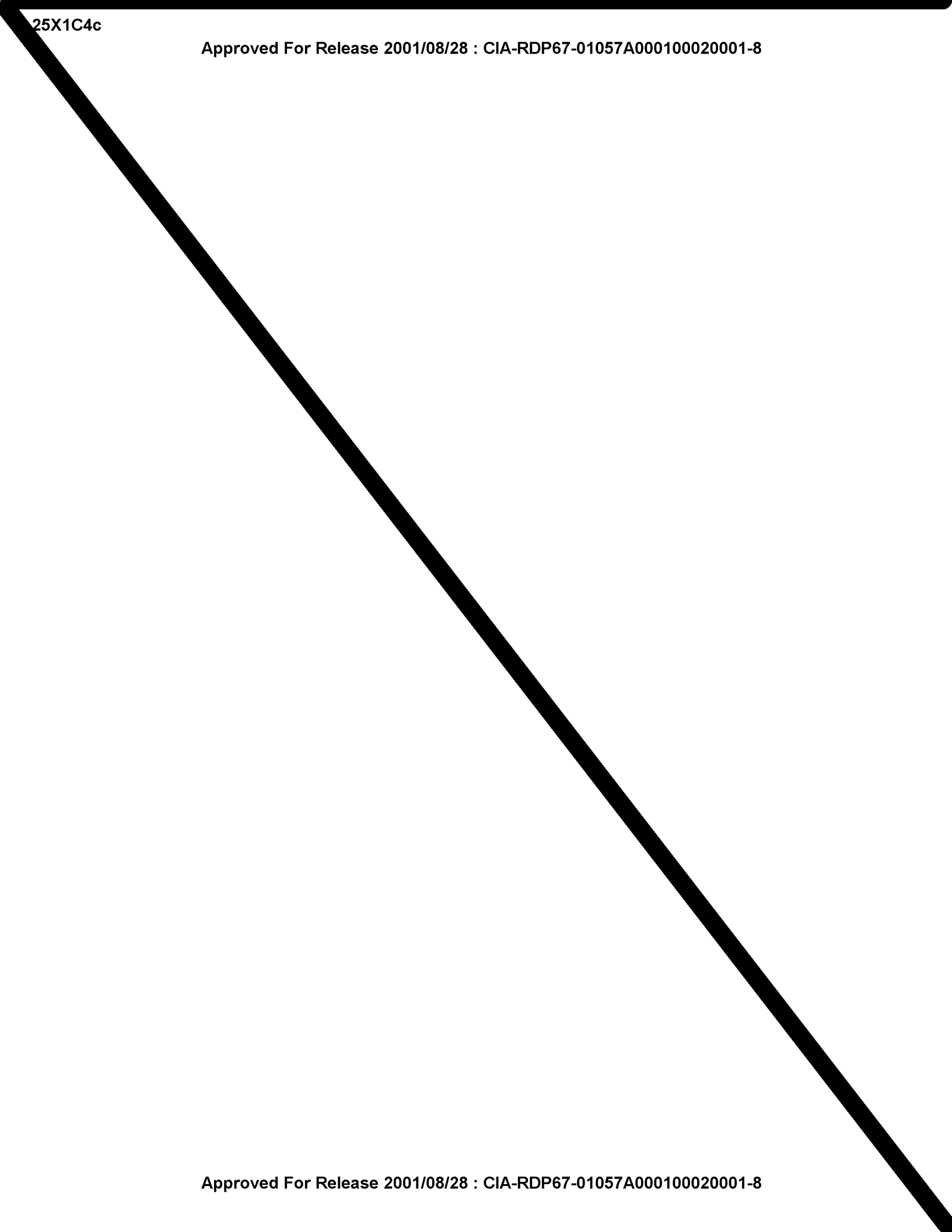
No. 148



Approved For Release 2001/08/28 : CIA-RDP67-01057A000100020001-8

Acting Chief, Supply Division

13 December 1948

Office of the General Counsel

Purchase of Protective Clothing for Government Employees

1. Your memorandum of 8 December 1948 requested our opinion in regard to procuring protective clothing for clerk-typists and proofreaders. In view of the fact that 25X1A9a
25X1A9a the memo of 24 November 1948 from [redacted] to Mr. [redacted] indicates that the employees find it necessary to use strong and injurious cleansers to remove the carbon from their hands and unprotected arms, it is believed that the purchase of the smocks can be justified under Section 13 of P.L. 600, "for the protection of personnel in the performance of their assigned tasks."

25X1A9a
[redacted]

cc:
Foreign Documents Branch
General Counsel:C[redacted]:msk 25X1A9a

150 Legal Decisions - Personnel Procedures

Nº 150

~~CONFIDENTIAL~~

Assistant Chief, Fiscal Division 17 December 1948

Office of the General Counsel

Quarters Allowances - Administrative Instruction No. 30-1

1. Your memorandum of 7 December 1948 requested our opinion regarding the necessity for obtaining a new authorization from the Director for certain personnel within the scope of 25X1A [redacted] dated 25 October 1947.

2. The Instruction of 25 October 1947 superseded a previous Instruction dated 31 October 1946, but there is no conflict between the two Instructions in regard to the quarters allowance grouping within Group 2. The later Instruction is clearer, but, in fact, if not in terminology, the two are identical. The memorandum of 15 October 1947 referred specifically to the earlier Instruction and simply provided approval which was authorized by the Instruction. Although the memorandum referred specifically to the first Instruction, the reference seems primarily for justification of authority, and in view of the fact that such authority was neither superseded nor modified by the later Instruction, we do not believe it is necessary to obtain a new approval from the Director.

3. As the result of recent discussions with the legal representative of the Department of State, it is understood that the problem presented here will be moot after the first pay period of 1949 which includes 2 January. At that time, the new Standardized Government Civilian Allowance Regulations become effective. The Regulations are issued by the State Department under the authority delegated by the President in Executive Order 10011 of October 22, 1948. By interpretation of the State Department, with concurrence of the Bureau of the Budget, any exceptions to the maximum Quarters Allowances (Regulations, Section 9.3) apply only to Foreign Service personnel - [redacted] 25X1C4a For all other personnel, the limits contained within the table are inflexible. Thus, the only manner in which a CAF-12, regardless of his duties, could be entitled to the allowances of Group 2 would be by an increase in classification to conform with the table.

25X1A9a

[redacted]

~~CONFIDENTIAL~~

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No. 151

Contracts
(Waiver of)

CPD

20 December 1948

Assistant General Counsel

25X1A9a [redacted]

1. Reference is made to your memorandum, dated 8 December 1948, concerning the above subject. You attached a Memorandum For The Record, signed by [redacted], dated 25X1A9a 23 November 1948. That memorandum is returned herewith. You point out that at the time subject entered on duty, she signed a Form No. 51-104. You request a decision be rendered concerning the validity of the waiver granted by the Assistant Director for the Office of Policy Coordination.

2. Form No. 51-104 is a form prescribed and made a part of CIA Administrative Instruction No. 20-7, dated 11 June 1948, signed by the Director. It is provided in that Instruction that appointments of employees to be paid from unvouchered funds will be made where employees are specifically employed for overseas duty on the prescribed form No. 51-104. The Assistant Directors for Operations and Special Operations are authorized, in their discretion, to require acceptance of an agreement prescribing a tour of less than twenty-four months where it is determined to 25X1A9a be in the best interests of the Government. The effect of [redacted] memorandum of 23 November 1948 is a conditional waiver of the requirements of Administrative Instruction No. 20-7 as to length of overseas service required.

3. Since Administrative Instruction No. 20-7 was signed by the Director, and no discretion, to the knowledge of this office, has been provided for the Assistant Director for O/C, it would appear that in so far as any variation from the prescribed tour of duty abroad is concerned, the memorandum of 23 November 1948 is without effect. The question of whether a shorter tour of duty abroad, based on possible health considerations would be in the best interests of the Government is not raised, and consequently, will not be answered by this office at this time.

25X1A9a

General Counsel: [redacted] :mes 25X1A9a [redacted]

Encl: 1
Memo For The Record, dated 23 November 1948, 25X1A9a signed by [redacted]

cc: O/C
CAS
SFD

Legal Decisions - Personnel Procedures
CIA Chrono

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No. 152

legal decisions

Statutes
appropriations

Files

21 December 1948

[redacted] 25X1A9a

Use of Metered Parking Space by Government Cars

1. The question has been raised regarding the propriety of paying for metered parking space when cars bearing Government tags are used.

2. The Comptroller General has indicated in two opinions that payment for the use of metered spaces for Government cars will not be allowed as long as there is no statutory provision or judicial decision permitting it. In 18 Comp. Gen. 151, it was held that appropriate monies could not be considered available for the purchase of service cards for the parking of Government vehicles in a metered zone in lieu of payment of parking fee rates. This was so notwithstanding the fact that the charge for the cards was normal and the fee covered the cost of inspection, installation, operation, control, etc. of the parking area and meters. The question arose when the Veterans' Administration indicated their need to park cars within a metered zone for the convenience of disabled beneficiaries obtaining prosthetic appliances. The Comptroller decided that it was not necessary to determine whether the charge was a tax or a fee incidental to the excerise of the police power. His opinion was based on the fundamental freedom of the Federal Government from interference by a State or Municipality, and he specifically called attention to the opinion of Mr. Justice Holmes in Johnson v. Maryland, 254 U.S. 51, in which it was stated that the subjection of agents of the Federal Government to local law may properly be extended to general rules that only incidentally affect the mode of carrying out the employment. Inferentially, the Comptroller indicated that the identification of the car as a Government-owned vehicle would obviate any liability for payment of the parking fee. The opinion was approved and amplified in 26 Comp. Gen. 397 in a situation where meters were removed and the restricted space was rented from the city. Again, he emphasized the fact that payment of the rent was not authorized in the absence of a court decision or a statutory provision.

3. In practice, the problem does not appear to have arisen - or at least not to have been questioned - in several Government Agencies queried in Washington. In the

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case of the Army, the fee is paid when necessary by the person to whom the car is assigned. This is also true in the Corps of Engineers. The Treasury Department obtains police permits for everyone using cars within restricted or metered areas, and the Department of Interior is completely unaware of any difficulty.

4. Unfortunately, there does not appear to have been any instance in which a Government car was left in an unpaid metered space and notice of traffic infraction served by the local police. When this happens, we shall probably have the clearest presentation of the issue.

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Nº 154

Files

23 December 1948

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Limitation of Liability in Bill of Lading

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1. Goods were shipped from Rosslyn, Virginia, to [redacted], on a Government bill of lading by the Railway Express Company. On arrival, it was discovered that the goods had been damaged to the extent of $80.70. The carrier (Railway Express Agency) was notified of the damage and payment of other outstanding accounts was withheld pending settlement of the claim. The Railway Express Agency asserted that their liability was limited to $50.00 in accordance with the terms of the standard express receipt. The fact that a Government bill of lading, rather than the commercial type, was used was pointed out to them and the carrier's liability to the full extent of the damages was claimed by this Agency Railway Express replied that conditions 2 and 5 of the Government bill of lading provided that the same terms governing commercial shipments and the limited valuations specified in their tariff applied to the Government bill of lading in view of the reference therein to the commercial express receipt.

2. It can be accepted that the United States, in the course of its commercial transactions, is bound by the same practices which would govern an individual. (United States v. American Sales Corporation, 27 Fed. (2nd) 389, [1928].) Generally, the carrier is obliged to pay the full claim for any damages resulting from its negligence and a complete and unconditional release for the negligence of the carrier is void. (Woodburn v. Cin., N.O. & T. P. Ry. Co., 40 F. 731.) However, this rule, which is maintained in the interest of public policy, can be restricted by a valid limitation of damages when the shipper is given a choice of rates. (Union Pacific Railroad Company v. Burke, 255 U.S. 317 [1920].) When the rates are based on a stated valuation, it is established in common law that the compensation should be related to the risk, and a limitation commensurate with the rate will be upheld. (American Express Company v. United States, 60 Court Claims 429 [1925].) There are elements of estoppel in the situation and at least one court divorced it from the theory of consideration. Simply, it has been stated that the "rate must be tied to the release". (San Giorgio I. Rheinstrom Bros. Company, 294 U.S. 494 [1934].)

3. When more than one rate is available and the stated value of the goods at the lower rate can be tied to the "release valuation", the shipper is bound by that ceiling on damages. In passing, it should be noted that the shipper's knowledge of the rate which the carrier is lawfully entitled to charge is conclusively presumed. (Kansas City Southern Railway Co. v. Carl, 227 U.S. 639 [1912].) The shipper's acceptance of the express receipt containing a limitation of liability which is related

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to Approved For Release 2001/08/28 : CIA-RDP67-01057A000100020001-8 not contrary to the provisions of the Carmack Amendment of June 29, 1906, to the act of February 4, 1887, 49 USCA Section 20 (Wells Fargo and Co. v. Neiman-Marcus Co., 227 US. 469.) In addition to the fact that the shipper is conclusively presumed to have knowledge of the carrier's rate, it should be noted that the conditions in the bill of lading are binding on the shipper simply by acceptance of the carrier's service and the shipper's signature on the bill of lading is not necessary. (American Railway Express Co. v. Lindenberg, 260 U.S. 584 [1922].)

4. There is no indication on the face of the bill of lading that an evaluation was given to the property shipped. The invoice value of $350.00 is stated only in the report of loss on the back of the bill of lading and apparently was not stated at the time of shipment. Nor was any provision made for payment of evaluation in excess of that provided in the tariff limitations. In unpublished opinion B-38529, dated 26 May 1944, the Comptroller General limited recovery to the tariff ceiling in a situation identical to this. Rule 13C of ICC 4500, Official Express Classification No. 33, provides for a limitation of liability in the shipment of adding machines of $50.00 for any amount under 100 pounds and $.50 per pound for any weight in excess of 100 pounds. In view of the Comptroller's opinion on this particular point, it appears that the Express Company's contention is valid and that our claim for damages should be reduced from the actual amount of $80.70 to the tariff maximum of $50.00

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Nº 156

SECRET

Traveling Expenses
(Leaves of Absence)

SUBJECT

31 December 1948

Assistant General Counsel

Travel for Leave Purposes Under Section 7, Public Law 600

1. Reference is made to your memorandum, dated 14 December 1948, in connection with the above subject. You cited Comptroller General's Decision No. B-79806 and requested answers to certain specific questions, as follows:

(a) Can travel to home in U.S. for leave be paid for employee and dependents at end of contractual period, if period is less than 24 month period prescribed by the Director as essential to granting "home leave", without specific waiver from the Director, CIA?

(b) If so, would travel expenses be paid in accordance with Public Law 600 and Standardized Government Travel Regulations or Foreign Service Travel Regulations, for our "Overseas" personnel?

(c) Does Comptroller General's Decision No. B-79806 allow employee's to place claims for travel expenses, previously incurred on TDY orders from field stations to Washington, if the employee were actually eligible for leave at home under Section 7 of Public Law 600?

2. In essence, B-79806 ruled that where an employee had fulfilled the requirements of his contract pursuant to Section 7, Public Law 600, it was immaterial whether he was returned for the purpose of leave or for the purpose of being separated from the service. Section 7, Public Law 600, requires a term of government service of one year's duration from the date of appointment. It was held in 27 Comp. Gen. 70 that the twelve months' period prescribed by that section may be considered as a minimum. Consequently, it is within the discretion of the various agencies to prescribe such longer periods as may be appropriate with respect to payment of travel and transportation expenses either going to or returning from a foreign duty post.

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3. Under present authorizations, all employees of [redacted] and CIC assigned to permanent posts of duty abroad are entitled to travel expenses in accordance with Foreign Service Rules and Regulations. Many of these employees were sent out under Section 7, Public Law 600, or other statutes. It is understood that contracts for periods of overseas service were signed by employees for various periods of time. If the contract period is in excess of one year from the date of appointment, and, assuming that the contract was duly authorized, there exists

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an obligation on the part of the United States Government to return such employee at the termination of the period prescribed in his contract. As stated in I-79306, it is immaterial whether that return is for leave or for separation, and the extension of Foreign Service Regulations to such employees can not operate to extinguish this contractual right. Therefore, your question (c) is answered in the affirmative.

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4. Your question (b) asks if such travel expenses would be paid in accordance with Standardized Government Travel Regulations or Foreign Service Regulations for [redacted] personnel. [redacted] have been authorized to receive travel allowances in accordance with Foreign Service Regulations. Of course, each specific travel order must authorize per diem. Travel expenses would be received by the employee and his dependents if the employee is being returned upon completion of his prescribed time, either for reassignment in Washington or for separation, and there would be no doubt that competent travel authority could approve travel expenses for that employee in accordance with Foreign Service Rules and Regulations. Since the purpose for returning, i.e., leave, separation, or reassignment, has been held immaterial, it is the opinion of this office that once the obligation for travel at government expense is clear, Foreign Service Regulations could be applied regardless of the reason for the travel. The answer to your question (b) is answered accordingly.

5. In your question (c), you inquire whether travel previously incurred pursuant to TDY orders may be changed so as to permit an employee to claim travel expenses, if he were eligible for leave, to and from his place of residence. If an employee were ordered to the United States for temporary duty for reorientation and training, it was customary to permit the employee to take leave at his own expense. His temporary duty was performed in Washington, and he was placed on leave at Washington, and travel to any other place was a personal matter for the employee. Such travel order of this type was considered by the appropriate person at the time of its issuance, and it must be assumed that the intent was clear at the time competent travel authority signed the order. To say now, that such an employee was brought to the United States for the purpose of taking leave would be to deny the record. Consequently, in the absence of unusual circumstances indicating administrative errors, there appears to be no authority at this time to recognize an employee's claim for travel expenses based on the assumption that his TDY orders were actually home leave orders. We believe that your question (c) is answered by the above.

cc: OPC - [redacted] 25X1A9a
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C&R
CMD
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General Counsel: [redacted]mes 25X1A9a

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Assistant Chief, Budget and Finance

31 December 1948

Office of the General Counsel

Reclaim Covering Drivers License Fees

1. Your memorandum of 24 December 1948, presented the question of reimbursement to a Government employee for the expense of obtaining a drivers license in connection with Government owned passenger vehicles for official business.

2. In an opinion dated March 19, 1924 (3 Comp. Gen. 663) the Comptroller General stated that:

> "The facilities of the Federal Government are not subject to local state ordinances or regulations and where such an ordinance or regulation of a municipal fire department requires that a permit be obtained for the operation of a gasoline pump, such permit to be issued upon examination and payment of a fee, a Federal employee, whose official duties require the operation of a Federal gasoline pump, is not required to stand the examination or to pay the fee."

The immunity of the Federal Government from interference by a state or municipality is based on the decision in Johnson v. Maryland, 254 U.S. 51. That was a case in which an employee of the Post Office Department, while driving a mail truck, was arrested, tried, convicted and fined for not possessing a Maryland driver's license. The court denied the power of the State of Maryland to require an employee of the Federal Government to submit to an examination or to pay a license fee before performing his official duties in obedience to orders. In denying that the state had such power, the court said:

> "Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed."

The rule, of course, applies equally to a municipality which is a lesser unit of the state. The Comptroller deviated from a firm position, however, and stated that even if the employees were required to obtain the permits and pay the necessary fees the requirement would be a personal expense incidental to their qualification for work and reimbursement from appropriated funds would not be authorized. This compromise seems to indicate at the least a lack of certainty in the reasoning behind this opinion. In 15 Comp. Gen. 519, the first opinion was confirmed and the qualification of the expense as a personal one to the employee was restated. (Actually, in this case, the expense was

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allowed as a matter of reimbursement, but only because the employee was a member of the Civilian Conservation Corps and the Comptroller reasoned that the employment was largely in the nature of relief and to deny payment of the charge would controvert the nature of the employment itself.) The same line of reasoning was followed in 21 Comp. Gen. 769 - but with better justification - where reimbursement of the cost of a chauffeur's license for an employee of a CPFF contractor was denied. The Comptroller again felt that the expense was personal to the employee as an incident to his employment. The Comptroller's manner of thinking is somewhat clarified by his opinion in 25 Comp. Gen. 10, where payment for a license exempting the purchaser of fuel from payment of state tax was allowed. In a previous decision (21 Comp. Gen. 843) he had decided that the Federal Government was liable for a state fuel tax since the State had the right to decide on whom the incidents of the tax should fall, and the State had decided that it fell upon the vendor rather than the Government. It was, therefore, a legitimate charge not directly interfering with the function of the Government, since it was not a tax but a condition under which a privilege was extended.

3. Your association of this problem to that of the payment of metered parking space appears to be perfectly correct in view of the fact that the answers to both problems stem from the interpretation of sovereign immunity given by the Supreme Court in Johnson v. Maryland. If Johnson v. Maryland is to be followed to its ultimate deduction, there would seem to be no doubt about the employees' immunity from payment of the license fee while driving a Government vehicle in the course of his official duties. The Comptroller has evaded a definite stand along this line, however, and has refused payment on the basis that payment of the fee is an element of the employee's qualification for duty. Although this does not appear to be particularly sound, it is nevertheless the fact and reimbursement of the charge cannot be authorized.

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